

CHILD NUTRITION ACT OF 1966

[As Amended Through P.L. 106–170, Dec. 17, 1999]

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Bracketed material and footnotes did *not* appear in Acts.

Public Law 89-642

AN ACT

To strengthen and expand food service programs for children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [42 U.S.C. 1771 note] That this Act may be cited as the “Child Nutrition Act of 1966”.¹⁻¹

DECLARATION OF PURPOSE

SEC. 2. [42 U.S.C. 1771] In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.

SPECIAL MILK PROGRAM AUTHORIZATION

SEC. 3. [42 U.S.C. 1772] (a)³⁻¹(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary³⁻² may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], and (B) nonprofit nurs-

¹⁻¹ P.L. 89-642, 80 Stat. 885, Oct. 11, 1966.

Section 752(b)(16) of P.L. 106-78, 113 Stat. 1169, Oct. 22, 1989, amended sections 3, 4, 7, 10, 13, 16(b), 17, and 19(d) by striking “National School Lunch Act” each place it appears and inserting “Richard B. Russell National School Lunch Act”.

³⁻¹ This section completely revised by P.L. 91-295, 84 Stat. 336, June, 30, 1970, substituting authorizations of appropriations for fiscal year 1970 and succeeding years, not to exceed \$120,000,000, for prior authorizations for fiscal years 1967, 1968, and the two succeeding fiscal years. Section 3(a) of P.L. 93-347, 88 Stat. 341, July 12, 1974, substituted “such sums as may be necessary” for “not to exceed \$120,000,000.” Section 3 redesignated as section 3(a) by section 813(c) of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981, and a new subsection (b) added. Section 329 of P.L. 99-500, 100 Stat. 1783-362, Oct. 18, 1986, inserted “(1)” after the subsection designation, redesignated clauses (1) and (2) as subparagraphs (A) and (B) respectively, inserted in subparagraph (A) (as redesignated) “except as provided in paragraph (2),” after “and under,”; designated the second through eighth sentences as paragraphs (3) through (9), respectively; and inserted a new paragraph (2) after paragraph (1) (as so designated). Section 329 of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4209 of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made the same revisions.

Section 211(a) of P.L. 101-147, 103 Stat. 911, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)), as similarly amended first by section 329 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-365) and later by section 4209 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if only the later amendment was enacted.

³⁻² Section 321(1) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended the first sentence of paragraph (1) by striking “he” and inserting “the Secretary”.

ery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act.³⁻³

(2)³⁻⁴ The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the Richard B. Russell National School Lunch Act.³⁻⁵

(3) For the purposes of this section “United States” means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia.³⁻⁶

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as the Secretary³⁻⁷ administered the special milk program provided for by Public Law 89-642, as amended, [(80 Stat. 885)] during the fiscal year ending June 30, 1969.

(5)³⁻⁸ Any school or nonprofit child care institution which does not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act shall receive the special milk program upon its³⁻⁹ request.

(6)³⁻¹⁰ Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7)³⁻¹¹ For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall

³⁻³ Section 807 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, added the requirement that schools and other institutions may participate in the Special Milk Program only if they do not participate in any other program authorized under this Act or the Richard B. Russell National School Lunch Act.

³⁻⁴ This paragraph added by section 329(3) of P.L. 99-500, 100 Stat. 1783-362, Oct. 18, 1986. Section 329(3) of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4209(3) of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made the same addition.

³⁻⁵ Section 321(2) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended paragraph (2) by striking “(42 U.S.C. 1751 et seq.)”.

³⁻⁶ P.L. 91-295, 84 Stat. 336, June 30, 1970, revised definition to include Guam. Section 15(1) of P.L. 94-105, 89 Stat. 522, Oct. 7, 1975, inserted “the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.”. Section 721 of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996, amended paragraph (3) by striking “the Trust Territory of the Pacific Islands” and inserting “the Commonwealth of the Northern Mariana Islands”.

³⁻⁷ Section 321(3) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended paragraph (4) by striking “he” and inserting “the Secretary”.

³⁻⁸ This sentence added by section 7 of P.L. 93-150, 87 Stat. 563, Nov. 7, 1973. Section 807 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, added the requirement that schools and institutions may participate in the Special Milk Program only if they do not participate in any other programs authorized under this Act or the Richard B. Russell National School Lunch Act.

³⁻⁹ Section 321(4) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended paragraph (5) by striking “their” and inserting “its”.

³⁻¹⁰ This sentence added by section 7 of P.L. 93-150, 87 Stat. 563, Nov. 7, 1973, amended by section 11 of P.L. 95-166, 91 Stat. 1337, Nov. 10, 1977, and revised by section 5(a) of P.L. 95-627, 92 Stat. 3619, Nov. 10, 1978, effective July 1, 1979.

³⁻¹¹ This sentence added by section 3(b) of P.L. 93-347, 88 Stat. 341, July 12, 1974. Sections 20(1) and (2) of P.L. 95-166, 91 Stat. 1346, Nov. 10, 1977, placed the reimbursement on a school year rather than fiscal year basis and deleted reference to fiscal year 1986 as first year for adjustment, effective July 1, 1977. Section 5(a) of P.L. 95-627, 92 Stat. 3619, Nov. 10, 1978, substituted “Producer Price Index for Fresh Processed Milk” for “series of food away from home of the Consumer Price Index”, effective July 1, 1979.

not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8)³⁻¹² Such adjustment shall be computed to the nearest one-fourth cent.

(9)³⁻¹³ Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(10)³⁻¹⁴ The State educational agency shall disburse funds paid to the State during any fiscal year for purposes of carrying out the program under this section in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State. The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(b)³⁻¹⁵ Commodity only schools shall not be eligible to participate in the special milk program under this section. For the purposes of the preceding sentence, the term "commodity only schools" means schools that do not participate in the school lunch program under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

SCHOOL BREAKFAST PROGRAM AUTHORIZATION

SEC. 4.⁴⁻¹ [42 U.S.C. 1773] (a)⁴⁻² There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense⁴⁻³ through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this Act.⁴⁻⁴

³⁻¹² This sentence added by section 3(b) of P.L. 93-347, 88 Stat. 341, July 12, 1974.

³⁻¹³ This sentence added by section 15(2) of P.L. 94-105, 89 Stat. 522, Oct. 7, 1975. Section 209 of P.L. 96-499, 94 Stat. 2602, Dec. 5, 1980, had added a sentence which provided for a 5 cent rate of reimbursement per half pint of milk served to children not eligible for free milk. This sentence deleted by section 807 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981.

³⁻¹⁴ Paragraph (10) added by section 211(b) of P.L. 101-147, 103 Stat. 911, Nov. 10, 1989.

³⁻¹⁵ This subsection added by section 813(c)(2) of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981.

⁴⁻¹ Section 322(1) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended section 4 by striking "reduced-price" each place it appears and inserting "reduced price".

⁴⁻² Section 5 of P.L. 90-302, 82 Stat. 119, May 8, 1968, substituted authorizations of appropriations for fiscal years 1969-1971 for previous fiscal year 1967 and 1968 authorizations and added provision that "Appropriations and expenditures for this Act shall be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.". Section 10 of P.L. 91-248, 84 Stat. 214, May 14, 1970, increased the fiscal year 1971 authorization. Section 2 of P.L. 92-32, 85 Stat. 85, June 30, 1971, authorized fiscal year 1972 and 1973 appropriations and deleted fiscal year 1969-1971 authorizations. Section 3(a) of P.L. 92-433, 86 Stat. 724, Sept. 26, 1972, authorized such sums as may be necessary for fiscal years 1973, 1974, and 1975 and deleted fiscal year 1972-1973 authorizations. Section 2 of P.L. 94-105, 89 Stat. 511, Oct. 7, 1975, deleted reference to fiscal years 1973-1975.

⁴⁻³ Section 1408(b)(1) of P.L. 95-561, 92 Stat. 2368, Nov. 1, 1978, added reference to Department of Defense.

⁴⁻⁴ Section 3(a) of P.L. 92-433, 86 Stat. 724, Sept. 26, 1972, substituted "in all schools which make application for assistance and agree to carry out a nonprofit breakfast pro-

Appropriations and expenditures for this Act shall be considered Health and Human Services ⁴⁻⁵functions for budget purposes rather than functions of Agriculture.

APPORTIONMENT TO STATES

(b) ⁴⁻⁶(1) ⁴⁻⁷(A)(i) ⁴⁻⁸ The Secretary shall make breakfast assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in an amount equal to the product obtained by multiplying—

(I) the number of breakfasts served during such fiscal year to children in schools in such States which participate in the school breakfast program under agreements with such State educational agency; by

(II) the national average breakfast payment for free breakfasts, for reduced price breakfasts, or for breakfasts served to children not eligible for free or reduced price meals, as appropriate, as prescribed in clause (B) of this paragraph.

(ii) ⁴⁻⁹ The agreements described in clause (i)(I) shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(B) The national average payment for each free breakfast shall be 57 cents (as adjusted pursuant to section 11(a) of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1759a(a))]. The national average payment for each reduced price breakfast shall be one-half of the national average payment for each free breakfast, ⁴⁻¹⁰ except that in no case shall the difference between the amount of the national average payment for a free breakfast and the national average payment for a reduced price breakfast exceed 30 cents. The national average payment for each breakfast served to a child not eligible for free or reduced price meals shall be 8.25

gram in accordance with this Act” for “in schools”. The phrase “and to carry out the provisions of subsection (g)” was added by section 121(1) of P.L. 101-147, 103 Stat. 891, Nov. 10, 1989, and struck by section 201 of P.L. 105-336, 112 Stat. 3158, Oct. 31, 1998.

⁴⁻⁵ Section 509(b) of P.L. 96-88, 93 Stat. 695, Oct. 17, 1979, provided that any reference to the Secretary of Health, Education, and Welfare shall be deemed to refer to the Secretary of Health and Human Services. Section 372(b)(1) of P.L. 99-500, 100 Stat. 1783-369, Oct. 18, 1986, amended this section—as well as subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788)—by striking out “Health, Education, and Welfare” each place it appeared therein and inserting in lieu thereof “Health and Human Services”. Section 372(b)(1) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4502(b)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the same substitutions.

⁴⁻⁶ Section 3(b) of P.L. 92-433, 86 Stat. 724, Sept. 26, 1972, completely revised this subsection. This subsection further revised by section 4(c) of P.L. 93-150, 87 Stat. 56, Nov. 7, 1973, by adding two sentences setting national average payments and severe need payments. Section 15(b) of P.L. 94-105, 89 Stat. 522, Oct. 7, 1975, added references to the Trust Territory of the Pacific Islands.

⁴⁻⁷ Section 12 of P.L. 95-166, 91 Stat. 1337, Nov. 10, 1977, designated subsection (b) as (b)(1), struck the last sentence concerning severe need payments, and added a new paragraph (2). Subsection (b)(1) completely revised by section 801(c)(1) of P.L. 97-35, 95 Stat. 522, Aug. 13, 1981.

⁴⁻⁸ Section 112(b) of P.L. 101-147, 103 Stat. 912, Nov. 10, 1989, redesignated clauses (i) and (ii) as subclauses (I) and (II), inserted “(i)” after “(A)”, and inserted a new clause (ii).

⁴⁻⁹ See note 4-8.

⁴⁻¹⁰ Section 103(b)(2)(A) of P.L. 105-336, 112 Stat. 3146, Oct. 31, 1998, amended this sentence by striking “adjusted to the nearest one-fourth cent.”.

cents (as adjusted pursuant to section 11(a) of the Richard B. Russell National School Lunch Act).⁴⁻¹¹

(C) No school which receives breakfast assistance payments under this section may charge a price of more than 30 cents for a reduced price breakfast.

(D) No breakfast assistance payment may be made under this subsection for any breakfast served by a school unless such breakfast consists of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under subsection (e) of this section.

(E)⁴⁻¹² FREE AND REDUCED PRICE POLICY STATEMENT.—

After the initial submission, a school food authority shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the school food authority. A routine change in the policy of a school food authority, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, shall not be sufficient cause for requiring the school food authority to submit a policy statement.

(2)⁴⁻¹³(A) The Secretary shall make additional payments for breakfasts served to children qualifying for a free or reduced price meal at schools that are in severe need.

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents (as adjusted pursuant to section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B))).⁴⁻¹⁴

(C) The maximum payment for each such reduced price breakfast shall be thirty⁴⁻¹⁵ cents less than the maximum payment for each free breakfast as determined under clause (B) of this paragraph.

⁴⁻¹¹ Section 11(a)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)) requires the Secretary of Agriculture to prescribe an annual adjustment in the national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b))).

Section 12(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(f)) permits the Secretary of Agriculture to adjust for certain States the national average payment rates prescribed under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

Section 17(c)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(c)(2)) bases the national average payment rate for free, reduced price, and paid breakfasts on the rates prescribed under section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)).

⁴⁻¹² This subparagraph added by section 722 of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996.

⁴⁻¹³ This subsection added by section 12(3) of P.L. 95-166, 91 Stat. 1337, Nov. 10, 1977.

⁴⁻¹⁴ Section 103(b)(2)(B) of P.L. 105-336, 112 Stat. 3146, Oct. 31, 1998, amended this clause by striking “, which shall be adjusted” and all that follows and inserting “(as adjusted pursuant to section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B))).”. Previously, this clause was amended by section 210 of P.L. 96-499, 94 Stat. 2602, Dec. 5, 1980, and section 801(c)(2)(A) of P.L. 97-35, 95 Stat. 523, Aug. 13, 1981.

⁴⁻¹⁵ Section 801(c)(2)(B) of P.L. 97-35, 95 Stat. 523, Aug. 13, 1981, substituted “thirty” for “five”.

(3)⁴⁻¹⁶ The Secretary shall increase by 6 cents⁴⁻¹⁷ the annually adjusted payment for each breakfast served under this Act and section 17 of the Richard B. Russell National School Lunch Act.⁴⁻¹⁸ These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.⁴⁻¹⁹

(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the Richard B. Russell National School Lunch Act.

(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).

STATE DISBURSEMENT TO SCHOOLS

(c) Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by the State educational agency to assist such schools in⁴⁻²⁰ operating a breakfast program and for the purpose of subsection (d).⁴⁻²¹ Disbursement to schools shall be made at such rates per meal or on such other basis as the Secretary shall prescribe. In selecting schools for participation, the State educational agency shall, to the extent practicable, give first consideration to those schools drawing attendance from areas in which poor economic conditions exist, to those schools in which a substantial proportion of the children enrolled must travel long distances daily,

⁴⁻¹⁶ Section 330(a) of P.L. 99-500, 100 Stat. 1783-363, Oct. 16, 1986, added paragraphs (3) through (5). Section 330(a) of P.L. 99-591, 100 Stat. 3341-566, Oct. 30, 1986, and section 4210(a) of P.L. 99-661, 100 Stat. 4074, Nov. 14, 1986, made the same addition.

Section 212(a)(1) of P.L. 101-147, 103 Stat. 912, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)), as similarly amended first by section 330(a) of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-366) and later by section 4210(a) of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), and as then amended by section 210 of the Hunger Prevention Act of 1988 (Public Law 100-435) is amended to read as if only the amendment made by section 4210(a) of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987, was enacted.

⁴⁻¹⁷ Section 212(a)(2)(A) of P.L. 101-147, 103 Stat. 912, Nov. 10, 1989, amended section 4(b)(3) by striking "3 cents" and inserting "6 cents". Section 212(a)(2)(B) provides that the amendments made by such section 212(a)(2)(A) shall take effect as if such amendments had been effective on July 1, 1989. Sections 210 and 701(b)(4) of the Hunger Prevention Act of 1988 (P.L. 100-435) earlier made identical amendments. See note 4-16.

⁴⁻¹⁸ Section 322(2) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended subsection (b)(3) by striking "(42 U.S.C. 1766)".

⁴⁻¹⁹ Section 330(b) of Public Laws 99-500 and 99-591 and section 4210(b) of Public Law 99-661 require the Secretary of Agriculture to review and revise the nutrition requirements for meals served under the breakfast program authorized under this Act to improve the nutritional quality of the meals and to promulgate regulations to implement the revisions.

⁴⁻²⁰ Section 819(b) of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, deleted the words "financing the costs of" from this point in this sentence.

⁴⁻²¹ This sentence substituted by section 4(a) of P.L. 93-150, 87 Stat. 562, Nov. 7, 1973, for a provision authorizing assistance in financing the cost of obtaining food; section 4(b) of that Act, 87 Stat. 562, also deleted a sentence concerning determination of food costs. Earlier, section 3(a) of P.L. 92-32, 85 Stat. 85, June 30, 1971, amended the original sentence.

and to those schools in which there is a special need for improving the nutrition and dietary practices of children of working mothers and children from low-income families.⁴⁻²² Breakfast assistance disbursements to schools under this section may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.⁴⁻²³

[SEVERE NEED ASSISTANCE]

(d)⁴⁻²⁴(1) Each State educational agency shall provide additional assistance to schools in severe need, which shall include only—

(A) those schools in which the service of breakfasts is required pursuant to State law; and

(B) those schools (having a breakfast program or desiring to initiate a breakfast program) in which, during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price, and in which the rate per meal established by the Secretary is insufficient to cover the costs of the breakfast program.

The provision of eligibility specified in clause (A) of this paragraph shall terminate effective July 1, 1983, for schools in States where the State legislatures meet annually and shall terminate effective July 1, 1984, for schools in States where the State legislatures meet biennially.

(2) A school, upon the submission of appropriate documentation about the need circumstances in that school and the school's eligibility for additional assistance, shall be entitled to receive 100 percent of the operating costs of the breakfast program, including the costs of obtaining, preparing, and serving food, or the meal reimbursement rate specified in paragraph (2) of section 4(b) of this Act, whichever is less.

NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

(e)⁴⁻²⁵(1)(A)⁴⁻²⁶ Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts.⁴⁻²⁷ Such breakfasts shall be served

⁴⁻²² Section 3(b) of P.L. 92-32, 85 Stat. 85, June 30, 1971, revised this sentence to extend preference to schools where there is a special need for improving nutrition.

⁴⁻²³ This sentence added by section 3(c) of P.L. 94-433, 86 Stat. 725, Sept. 26, 1972.

⁴⁻²⁴ Section 801(c)(3)(A) of P.L. 97-35, 95 Stat. 523, Aug. 13, 1981, completely revised subsection (d) which had been amended previously by section 4 of P.L. 92-32, 85 Stat. 85, June 30, 1971; section 12(4) of P.L. 95-166, 91 Stat. 1338, Nov. 10, 1977; and section 6(c) of P.L. 95-627, 92 Stat. 3620, Nov. 10, 1978.

⁴⁻²⁵ Original language amended by section 6(d) of P.L. 91-248, 84 Stat. 210, May 14, 1970, to prohibit overt identification of needy children; and section 5 of P.L. 92-32, 85 Stat. 85, June 30, 1971, to include reference to specific income eligibility requirements. The present language of subsection (e)(1) was substituted by section 3(d) of P.L. 92-433, 86 Stat. 725, Sept. 26, 1972. Section 331 of P.L. 99-500, 100 Stat. 1783-363, Oct. 18, 1986, inserted "(1)" after the subsection designation and added paragraph (2). Section 331 of P.L. 99-591, 100 Stat. 3341-366, Oct. 30, 1986, and section 4211 of P.L. 99-661, 100 Stat. 4074, Nov. 14, 1986, made the same revisions.

⁴⁻²⁶ Section 201(b)(1) of P.L. 103-448, 108 Stat. 4734, Nov. 2, 1994, amended this paragraph by inserting "(A)" after "(1)".

⁴⁻²⁷ Section 201(a) of P.L. 103-448, 108 Stat. 4734, Nov. 2, 1994, amended this paragraph by inserting "except" and all that follows through "breakfasts".

free or at a reduced price to children in school under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 9 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1758)].⁴⁻²⁸

(B)⁴⁻²⁹ The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs.

(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.

[(f)-(g)]⁴⁻³⁰

DISBURSEMENT TO SCHOOLS BY THE SECRETARY

SEC. 5.⁵⁻¹ [42 U.S.C. 1774] (a) The Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to schools or institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b)). Any funds so withheld and disbursed by the Secretary shall be

⁴⁻²⁸ Section 9(b)(6)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(A)) provides that a child shall be considered automatically eligible for a free breakfast under this Act if the child is a member of a household receiving food stamps or is a family (under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines meets certain standards).

Section 13(a)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)(5)) provides that eligible camps may receive reimbursement under the summer food service program for children only for meals served to children who meet the eligibility requirements for free or reduced price meals under such Act and the Child Nutrition Act of 1966.

⁴⁻²⁹ This subparagraph added by section 201(b)(2) of P.L. 103-448, 108 Stat. 4734, Nov. 2, 1994. Section 723(a) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended this subparagraph by striking the former second sentence (requiring the the Secretary to provide through State educational agencies additional technical assistance to schools that are having difficulty maintaining compliance with the requirements).

⁴⁻³⁰ Effective October 1, 1996, section 723(b)(1) of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996, repealed subsections (f) and (g). Subsection (f) was originally added by section 3 of P.L. 94-105, 89 Stat. 511, Oct. 7, 1975, and amended by section 817(d) of P.L. 97-35, 95 Stat. 532; section 121(2) of P.L. 101-147, 103 Stat. 891, Nov. 10, 1989; and section 201(c) of P.L. 103-448, 108 Stat. 4734, Nov. 2, 1994. Subsection (g) was originally added by section 121(3) of P.L. 101-147, 103 Stat. 892, Nov. 10, 1989, and amended by section 201(d) of P.L. 103-448, 108 Stat. 4734, Nov. 2, 1994.

⁵⁻¹ The original section 5 regarding food service equipment assistance repealed by section 805(b) of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981. Section 817(e) of P.L. 97-35, 95 Stat. 532, Aug. 13, 1981, added a completely new section 5 authorizing the Secretary to directly administer certain activities under this Act. The prior food service equipment assistance provision was amended by section 2 of P.L. 91-248, 84 Stat. 208, May 14, 1970; sections 6(a)-(d) of P.L. 92-433, 86 Stat. 727, Sept. 26, 1972; section 5 of P.L. 93-326, 88 Stat. 287, June 30, 1974; section 18 of P.L. 94-105, 89 Stat. 525, Oct. 7, 1975; sections 4 and 20(3)-(4) of P.L. 95-166, 91 Stat. 1332, 1346, Nov. 10, 1977; section 6(b) of P.L. 95-627, 92 Stat. 3620, Nov. 10, 1978, and section 211 of P.L. 96-499, 94 Stat. 2603, Dec. 5, 1980.

used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this Act. If the Secretary is administering (in whole or in part) any program authorized under this Act, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this Act to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

PAYMENTS TO STATES

SEC. 6. [42 U.S.C. 1775] The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under sections 3 through 7 of this Act and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

STATE ADMINISTRATIVE EXPENSES

SEC. 7.⁷⁻¹ [42 U.S.C. 1776] (a)⁷⁻²(1) Each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1753, 1759a, and 1766)] and sections 3 and 4⁷⁻³ of this Act during the second preceding fiscal year. The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) The Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs

⁷⁻¹ This section was completely revised by section 14 of P.L. 95-166, 91 Stat. 1338, Nov. 10, 1977. The section had previously been amended by section 4 of P.L. 90-302, 82 Stat. 119, May 8, 1968, and section 5 of P.L. 91-248, 84 Stat. 210, May 14, 1970. Section 201 of P.L. 96-499, 94 Stat. 2599, Dec. 5, 1980, provided that the amount of State administrative expense funds available to States under this section not be reduced as a result of the 2½ cent rate reductions required by that section for fiscal year 1981. Section 332 of P.L. 99-500, 100 Stat. 1783-363, Oct. 18, 1986, amended this section by striking out subsection (b), and by redesignating subsections (c) through (i) as subsections (b) through (h), respectively. Section 332 of P.L. 99-591, 100 Stat. 3341-367, Oct. 30, 1986, and section 4212 of P.L. 99-661, 100 Stat. 4075, Nov. 14, 1986, made the same revisions.

Title III of P.L. 100-460, 102 Stat. 2254, Oct. 1, 1988 provided that allocation of funds under this section contingent upon a State's agreement to participate in authorized studies and surveys and further provided that seriously deficient administration by a State entitled the Secretary to withhold some or all funds under this section and section 13(k)(1) of the Richard B. Russell National School Lunch Act until the programs were operated in an acceptable manner. These provisions have been codified at 42 U.S.C. 1776a and 1776b. Provisions similar to these sections were contained in the following prior Appropriations Acts: 1987—P.L. 100-202, § 101(k) [Title III], Dec. 22, 1987, 101 Stat. 1329-348; 1986—P.L. 99-500, Title I, § 101(a) [Title III, § 301], Oct. 18, 1986, 100 Stat. 1783-22; P.L. 99-591, Title I, § 101(a) [Title III, § 301], Oct. 30, 1986, 100 Stat. 3341-22; 1982—P.L. 97-370, Title III, § 301, Dec. 18, 1982, 96 Stat. 1805; 1981—P.L. 97-103, Title III, § 301, Dec. 23, 1981, 95 Stat. 1484; 1980—P.L. 96-528, Title III, § 301, Dec. 15, 1980, 94 Stat. 3112; 1979—P.L. 96-108, Title III, § 301, Nov. 9, 1979, 93 Stat. 837; 1979—P.L. 96-38, Title I, § 100, July 25, 1979, 93 Stat. 98.

⁷⁻² This subsection completely revised by section 7(a) of P.L. 95-627, 92 Stat. 3621, Nov. 10, 1978.

⁷⁻³ Section 819(e) of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, deleted references to section 5 here and in subsection (a)(2) and former subsection (b).

authorized under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] or under this Act, except for the programs authorized under section 13 or 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1761 or 1766)] or under section 17 of this Act, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1753 and 1759a)] and sections 3 and 4 of this Act during the second preceding fiscal year. In no case shall the grant available to any State under this subsection be less than the amount such State was allocated in the fiscal year ending September 30, 1981,⁷⁻⁴ or \$100,000, whichever is larger.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1766)] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first \$50,000, (B) 10 percent of the next \$100,000, (C) 5 percent of the next \$250,000, and (D) 2½ percent of any remaining funds. If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5).⁷⁻⁵ The Secretary may adjust any State's allocation to reflect changes in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] and this Act, except for section 17 of this Act, including, but not limited to, improved program integrity and the quality of meals served to children.

(5)⁷⁻⁶(A) Not more than 25 percent of the amounts made available to each State under this section for the fiscal year 1991 and 20 percent of the amounts made available to each State under this section for the fiscal year 1992 and for each succeeding fiscal year may remain available for obligation or expenditure in the fiscal year succeeding the fiscal year for which such amounts were appropriated.

(B)⁷⁻⁷ REALLOCATION OF FUNDS.—

(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

⁷⁻⁴“September 30, 1981” was substituted for “September 30, 1978” by section 814(a) of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981.

⁷⁻⁵This sentence inserted by section 122(a)(1)(A) of P.L. 101-147, 103 Stat. 893, Nov. 10, 1989.

⁷⁻⁶Section 122(a)(1) of P.L. 101-147, 103 Stat. 893, Nov. 10, 1989, redesignated paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and inserted a new paragraph (5).

⁷⁻⁷Section 202(a) of P.L. 105-336, 112 Stat. 3158, Oct. 31, 1998, amended this subparagraph in its entirety. Previously, this subparagraph was amended by section 103 of P.L. 102-512, Oct. 24, 1992, and section 117(a)(2)(B) of P.L. 103-448, 108 Stat. 4717, Nov. 2, 1994.

(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.

(6)⁷⁻⁸ USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under this Act (except for the programs authorized under sections 17 and 21) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) without regard to the basis on which the funds were earned and allocated.

(7)⁷⁻⁹ Where the Secretary is responsible for the administration of programs under this Act or the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1761(k)(1))] shall be retained by the Secretary for the Secretary's use in the administration of such programs.

(8)⁷⁻¹⁰ In the fiscal year 1991 and each succeeding fiscal year, in accordance with regulations issued by the Secretary, each State shall ensure that the State agency administering the distribution of commodities under programs authorized under this Act and under the Richard B. Russell National School Lunch Act is provided, from funds made available to the State under this subsection, an appropriate amount of funds for administrative costs incurred in distributing such commodities. In developing such regulations, the Secretary may consider the value of commodities provided to the State under this Act and under the Richard B. Russell National School Lunch Act.

(9)⁷⁻¹¹(A) If the Secretary determines that the administration of any program by a State under this Act (other than section 17) or under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or compliance with a regulation issued pursuant to either of such Acts, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under this section or under section 13(k)(1) or 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1) or 1766).

(B) On a subsequent determination by the Secretary that the administration of any program referred to in subparagraph (A), or compliance with the regulations issued to carry out the program, is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld under such subparagraph.

(b) Funds paid to a State under subsection (a) of this section may be used to pay salaries, including employee benefits and travel

⁷⁻⁸Section 202(b) of P.L. 105-336, 112 Stat. 3158, Oct. 31, 1998, amended this paragraph in its entirety. For redesignation, see note 7-6.

⁷⁻⁹For redesignation, see note 7-6.

⁷⁻¹⁰Paragraph (8) added by section 122(a)(1)(D) of P.L. 101-147, 103 Stat. 893, Nov. 10, 1989.

⁷⁻¹¹This paragraph added by section 202(a) of P.L. 103-448, 108 Stat. 4737, Nov. 2, 1994.

expenses, for administrative and supervisory personnel; for support services; for office equipment; and for staff development.

(c) If any State agency agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by the Secretary, an appropriate adjustment shall be made in the administrative funds paid under this section to the State not later than the succeeding fiscal year.

(d)⁷⁻¹² Notwithstanding any other provision of law, funds made available to each State under this section shall remain available for obligation and expenditure by that State during the fiscal year immediately following the fiscal year for which such funds were made available. For each fiscal year the Secretary shall establish a date by which each State shall submit to the Secretary a plan for the disbursement of funds provided under this section for each such year, and the Secretary shall reallocate any unused funds, as evidenced by such plans, to other States as the Secretary considers appropriate.

(e)⁷⁻¹³ Each State shall submit to the Secretary for approval by October 1 of the initial fiscal year a plan⁷⁻¹⁴ for the use of State administrative expense funds, including a staff formula for State personnel, system level supervisory and operating personnel, and school level personnel. After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.⁷⁻¹⁵

(f)⁷⁻¹⁶ Payments of funds under this section shall be made only to States that agree to maintain a level of funding out of State revenues, for administrative costs in connection with programs under this Act (except section 17 of this Act) and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] (except section 13 of that Act [(42 U.S.C. 1761)]), not less than the amount expended or obligated in fiscal year 1977, and that agree to participate fully in any studies authorized by the Secretary.⁷⁻¹⁷

(g)⁷⁻¹⁸ For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2003,⁷⁻¹⁹ there are

⁷⁻¹² Section 814(b) of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981, substituted provisions relating to general availability of unobligated funds during fiscal years following the fiscal years for which such funds were made available, for provisions relating to availability of unobligated funds for fiscal year 1979 and for the five succeeding fiscal years. Section 201(b)(1) of P.L. 96-499, 94 Stat. 2600, Dec. 5, 1980, substituted "and for the five succeeding fiscal years" for "and the succeeding fiscal year" in the prior provision.

⁷⁻¹³ Section 724(a) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended this section by striking former subsections (e) and (h) by redesignating former subsections (f), (g), and (i) as subsections (e), (f), and (g), respectively. Previously, section 202(c) of P.L. 103-448, 108 Stat. 4737, Nov. 2, 1994, inserted former subsection (h).

⁷⁻¹⁴ Section 724(b)(1) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended subsection (e) by striking "each year an annual plan" and inserting "the initial fiscal year a plan".

⁷⁻¹⁵ This sentence added by section 724(b)(2) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996.

⁷⁻¹⁶ See note 7-13.

⁷⁻¹⁷ Section 122(a)(2) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989, inserted "and that agree to participate fully in any studies authorized by the Secretary".

⁷⁻¹⁸ See note 7-13.

⁷⁻¹⁹ Section 122(a)(3) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989, amended this subsection by striking "For" and all that follows through "1989," and inserting "For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,". Section 202(b) of P.L. 103-448, 108 Stat. 4737, Nov. 2, 1994, amended this subsection by striking "1994" and inserting "1998". Section 202(c) of P.L. 105-336, 112 Stat. 3158, Oct. 31, 1998, amended this subsection by striking "1998" and inserting "2003".

Previously, section 313 of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986, amended this subsection by striking out "1984" and inserting in lieu thereof "1989". Section 313 of P.L.

Continued

hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

UTILIZATION OF FOODS

SEC. 8. [42 U.S.C. 1777] Each school participating under section 4 of this Act shall, insofar as practicable, utilize in its program foods designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or foods donated by the Secretary. Foods available under section 416 of the Agricultural Act of 1949 (63 Stat. 1058[; 7 U.S.C. 1431]), as amended, or purchased under section 32 of the Act of August 24, 1935 (49 Stat. 774[; 7 U.S.C. 612c]), as amended, or section 709 of the Food and Agriculture Act of 1965 (79 Stat. 1212[; 7 U.S.C. 1446a-1]), may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this Act.⁸⁻¹

NONPROFIT PROGRAMS

SEC. 9. [42 U.S.C. 1778] The food and milk service programs in schools and nonprofit institutions receiving assistance under this Act shall be conducted on a nonprofit basis.

99-591, 100 Stat. 3341-362, Oct. 30, 1986, and section 4103 of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986, made the same revision.

Previously, section 201(b)(2) of P.L. 96-499, 94 Stat. 2600, Dec. 5, 1980, had substituted "September 30, 1984" for "September 30, 1980".

⁸⁻¹ Section 211(a) of the Agricultural Trade Suspension Adjustment Act of 1980 (7 U.S.C. 4004(a)) permits the Secretary of Agriculture to distribute agricultural commodities to community food banks through the food distribution system used under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

Section 6(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(a)) provides that certain funds appropriated to carry out such Act and the Child Nutrition Act of 1966 may be expended by the Secretary of Agriculture for agricultural commodities and other foods to be distributed among the States, schools, and service institutions participating in the food service programs under such Acts.

Section 6(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(d)) prohibits the Secretary from offering commodity assistance based on the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

Section 14(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(a)(1)) requires the Secretary of Agriculture to use certain funds to purchase agricultural commodities and products to maintain the annually programmed level of assistance under the Child Nutrition Act of 1966.

Section 14(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(d)) requires the Secretary of Agriculture to establish certain procedures to purchase agricultural commodities and products to carry out the Child Nutrition Act of 1966.

Section 16(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1765(a)) permits certain States, for purposes of programs authorized under the Child Nutrition Act of 1966, to receive cash payments in lieu of donated foods.

Section 7 of the joint resolution entitled "Joint Resolution to assure that every needy schoolchild will receive a free or reduced price lunch as required by section 9 of the Richard B. Russell National School Lunch Act", approved November 5, 1971 (85 Stat. 420; 42 U.S.C. 1773 note) grants the Secretary of Agriculture additional authority to transfer funds from section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) to assist schools which demonstrate a need for additional funds in the school breakfast program.

REGULATIONS

SEC. 10.¹⁰⁻¹ [42 U.S.C. 1779] (a)¹⁰⁻² The Secretary shall prescribe such regulations as the Secretary¹⁰⁻³ may deem necessary to carry out this Act and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], including regulations relating to the service of food in participating schools and service institutions in competition with the programs authorized under this Act and the Richard B. Russell National School Lunch Act.¹⁰⁻⁴

(b)¹⁰⁻⁵ The regulations shall not prohibit the sale of competitive foods approved by the Secretary¹⁰⁻⁶ in food service facilities or areas during the time of service of food under this Act or the Richard B. Russell National School Lunch Act if the proceeds from the sales of such foods will inure to the benefit of the schools or of organizations of students approved by the schools.

(c)¹⁰⁻⁷ In such regulations the Secretary may provide for the transfer of funds by any State between the programs authorized under this Act and the Richard B. Russell National School Lunch Act on the basis of an approved State plan of operation for the use of the funds and may provide for the reserve of up to 1 per centum of the funds available for apportionment to any State to carry out special developmental projects.

PROHIBITIONS

SEC. 11. [42 U.S.C. 1780] (a) In carrying out the provisions of sections 3 and 4¹¹⁻¹ of this Act, the Secretary shall not¹¹⁻² impose any requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction.

(b) The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food pro-

¹⁰⁻¹ Section 11(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(b)) prescribes, except as provided in section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779), the use of special-assistance payments by State agencies.

Section 17(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(b)) bases the maximum for cash assistance provided under the child care food program, in part, on the amount of funds used by a State under section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779).

¹⁰⁻² Section 203(1) and (2) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994, designated the first, second, and third sentences as subsections (a), (b), and (c), respectively, and indented the margins of subsections (b) and (c) so as to align with the margins of subsection (b) of section 11.

¹⁰⁻³ Section 323 of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended this sentence by striking "he" and inserting "the Secretary".

¹⁰⁻⁴ Section 8 of P.L. 91-248, 84 Stat. 212, May 14, 1970, added the last portion of this sentence beginning with "and the Richard B. Russell National School Lunch Act" (the first time it appears).

¹⁰⁻⁵ This sentence added by section 7 of P.L. 92-433, 86 Stat. 729, Sept. 26, 1972. For designation as subsection (b), see note 10-2. Section 725 of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, struck former paragraphs (2) through (4). Former paragraphs (2), (3), and (4) originally added by section 203(3) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994.

¹⁰⁻⁶ Section 17 of P.L. 95-166, 91 Stat. 1345, Nov. 10, 1977, added "approved by the Secretary".

¹⁰⁻⁷ This sentence added by section 8 of P.L. 91-248, 84 Stat. 212, May 14, 1970. For designation as subsection (c), see note 10-2.

¹¹⁻¹ Section 819(f) of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, deleted reference to section 5.

¹¹⁻² Section 726 of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended subsection (a) by striking "neither the Secretary nor the State shall" and inserting "the Secretary shall not".

grams for children shall not be diminished as a result of funds received under this Act.¹¹⁻³

PRESCHOOL PROGRAMS

SEC. 12. [42 U.S.C. 1781] The Secretary may extend the benefits of all school feeding programs conducted and supervised by the Department of Agriculture to include preschool programs operated as part of the school system.

CENTRALIZATION OF ADMINISTRATION

SEC. 13. [42 U.S.C. 1782] Authority for the conduct and supervision of Federal programs to assist schools in providing food service programs for children is assigned to the Department of Agriculture. To the extent practicable, other Federal agencies administering programs under which funds are to be provided to schools for such assistance shall transfer such funds to the Department of Agriculture for distribution through the administrative channels and in accordance with the standards established under this Act and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)].

APPROPRIATIONS FOR ADMINISTRATIVE EXPENSE¹⁴⁻¹

SEC. 14. [42 U.S.C. 1783] There are¹⁴⁻² hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for the Secretary's¹⁴⁻³ administrative expense under this Act.

MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 15.¹⁵⁻¹ [42 U.S.C. 1784] For the purposes of this Act—
15-2

(1) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.¹⁵⁻³

¹¹⁻³ Section 245A(h)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(B)) exempts assistance provided under the Child Nutrition Act of 1966 from the temporary disqualification of newly legalized aliens from receiving certain public welfare assistance.

¹⁴⁻¹ Section heading for section 14 inserted by section 324(a) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989.

¹⁴⁻² Section 324(b)(1) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended section 14 by striking "is" and inserting "are".

¹⁴⁻³ Section 324(b)(2) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended section 14 by striking "his" and inserting "the Secretary's".

¹⁵⁻¹ This section amended by section 17(b) of P.L. 94-105, 89 Stat. 525, Oct. 7, 1975, which deleted paragraph (c) (definition of "nonprofit private schools") and redesignated paragraphs (d) and (e) as (c) and (d), respectively.

Section 325(2) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended section 15 by redesignating subsections (a) through (f) as paragraphs (1) through (6), respectively.

¹⁵⁻² Clauses (B) and (C) of the second sentence of section 13(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)(1)) uses the school breakfast program under the Child Nutrition Act of 1966 to define certain terms for purposes of the summer food service program for children.

¹⁵⁻³ Section 15(c) of P.L. 94-105, 89 Stat. 522, Oct. 7, 1975, substituted "American Samoa, or the Trust Territory of the Pacific Islands" for "or American Samoa". Section 727(1) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended paragraph (1) by striking "the Trust Territory of the Pacific Islands" and inserting "the Commonwealth of the Northern Mariana Islands".

(2)¹⁵⁻⁴ “State educational agency” means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(3)¹⁵⁻⁵ “School” means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor).¹⁵⁻⁶ For purposes of clauses (A) and (B) of this paragraph, the term “nonprofit”, when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.¹⁵⁻⁷

(4)¹⁵⁻⁸ “Secretary” means the Secretary of Agriculture.

(5)¹⁵⁻⁹ “School year” means the annual period from July 1 through June 30.

(6)¹⁵⁻¹⁰ Except as used in section 17 of this Act, the terms “child” and “children” as used in this Act, shall be deemed to

¹⁵⁻⁴ Section 325 of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended this paragraph (1) by redesignating former paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and (2) by redesignating former subsection (b) as paragraph (2).

¹⁵⁻⁵ This definition completely revised by section 17(b) of P.L. 94-105, 89 Stat. 525, Oct. 7, 1975.

For redesignation, see note 15-1.

¹⁵⁻⁶ Section 212 of P.L. 96-499, 94 Stat. 2603, Dec. 7, 1980, added the phrase “, but excluding Job Corps Centers funded by the Department of Labor”. Section 727(2) of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, struck “, and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico”.

¹⁵⁻⁷ Section 808(b) of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, added exception for nonprofit private schools whose average yearly tuition exceeds \$1,500.00 per child. Section 325(b) of P.L. 99-500, 100 Stat. 1783-361, Oct. 18, 1986, and section 325(b) of P.L. 99-591, 100 Stat. 3341-364, Oct. 30, 1986, deleted the phrase “except private schools whose average yearly tuition exceeds \$1,500 per child”. This provision was effective July 1, 1987, under section 325(c) of both acts. Section 4205(a) of P.L. 99-661, 100 Stat. 4072, Nov. 14, 1986, substituted “2,000” for “1,500” and added after the first sentence the following: “On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.” Title I, chapter X, P.L. 100-71, 101 Stat. 429, July 11, 1987, substantially revised this section, removing the tuition limitation and the sentence added by P.L. 99-661. P.L. 100-71 also substituted “Corps” for “Corp” in subsection (b) and “nonprofit” for “non-profit” in subsection (c).

Section 325(3) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended paragraph (3) by striking “Internal Revenue Code of 1954” and inserting “Internal Revenue Code of 1986”.

Clause (2)(B) of the last sentence of section 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)) prohibits an institution from participating in the child care food program if it has been seriously deficient in the operation of any program under the Child Nutrition Act of 1966.

Section 13(3)(A) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237) defines “recipient agency”, for purposes of such Act, to include a school authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to operate breakfast programs or similar programs and to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase.

¹⁵⁻⁸ For redesignation, see note 15-1.

¹⁵⁻⁹ This definition added by section 20(5) of P.L. 95-166, 91 Stat. 1346, Nov. 10, 1977. Section 10(c) of P.L. 95-627, 92 Stat. 3624, Nov. 10, 1978, amended the definition of school year to mean the annual period from July 1 through July 30.

For redesignation, see note 15-1.

¹⁵⁻¹⁰ Section 10(d)(3) of P.L. 95-627, 92 Stat. 3624, Nov. 10, 1978, added paragraph (6) (formerly subsection (f)).

Continued

include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more disabilities¹⁵⁻¹¹ and who are attending any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with disabilities.¹⁵⁻¹²

(7)¹⁵⁻¹³ **DISABILITY.**—The term “disability” has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

ACCOUNTS AND RECORDS

SEC. 16.¹⁶⁻¹ **[42 U.S.C. 1785]** (a) States, State educational agencies, schools, and nonprofit institutions participating in programs under this Act shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this Act and the regulations hereunder. Such accounts and records shall be available at any reasonable time¹⁶⁻² for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of three years, as the Secretary determines is necessary.¹⁶⁻³

(b)¹⁶⁻⁴ With regard to any claim arising under this Act or under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], the Secretary shall have the authority to determine the amount of, to settle and to adjust any such claim, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of either such Act. Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28, United States Code, to conduct litigation on behalf of the United States.

For redesignation, see note 15-1.

¹⁵⁻¹¹ Section 325(4)(A) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended paragraph (6) by striking “to be mentally or physically handicapped” and inserting “to have 1 or more mental or physical handicaps”. Section 107(j)(3)(D)(i) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this paragraph by striking “mental or physical handicaps” each place it appears and inserting “disabilities”.

¹⁵⁻¹² Section 325(4)(B) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, amended paragraph (6) by striking “for mentally or physically handicapped” and inserting “for individuals with mental or physical handicaps”. See note 15-11.

¹⁵⁻¹³ Section 107(j)(3)(D)(ii) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, added paragraph (7).

¹⁶⁻¹ Section 16 redesignated as section 16(a) by section 816 of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981.

¹⁶⁻² Section 728 of P.L. 104-193, 110 Stat. 2302, Aug. 22, 1996, amended this sentence by striking “at all times be available” and inserting “be available at any reasonable time”.

¹⁶⁻³ Section 12(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(h)) provides that no provision of such Act or the Child Nutrition Act of 1966 shall require any school receiving funds under such Acts to account separately for the cost incurred in the school lunch and school breakfast programs.

¹⁶⁻⁴ Section 816 of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981, added this subsection.

Section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)) prescribes a penalty for stealing funds or property which are the subject of a grant or other form of assistance under the Child Nutrition Act of 1966.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,
AND CHILDREN ¹⁷⁻¹

SEC. 17. ¹⁷⁻² [42 U.S.C. 1786] (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the oc-

¹⁷⁻¹ Section heading completely revised by section 204(w)(1) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994.

¹⁷⁻² This section completely revised by section 3 of P.L. 95-627, 92 Stat. 3611, Nov. 10, 1978, which also provided in section 13(b) that the current regulations would remain effective until regulations implementing these amendments were issued. The original section added by section 9 of P.L. 92-433, 86 Stat. 729, Sept. 26, 1972; revised by section 6 of P.L. 93-150, 87 Stat. 563, Nov. 7, 1973, and section 6 of P.L. 93-326, 88 Stat. 287, June 30, 1974, P.L. 94-28, 89 Stat. 96, May 28, 1975; extensively amended by section 14 of P.L. 94-105, 89 Stat. 518, Oct. 7, 1975; and again revised by sections 18 and 20(6) of P.L. 95-166, 91 Stat. 1345, 1346, Nov. 10, 1977.

Section 123(e) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, provides that, in implementing and monitoring compliance with the provisions of the amendments made by section 123 of P.L. 101-147 (other than the amendment made by section 123(a)(2) of P.L. 101-147 to section 17(d)(2) of this Act), the Secretary shall not impose any new requirement on a State or local agency that would require the State or local agency to place additional paperwork or documentation in a case file maintained by a local agency.

Section 12(g)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2021(g)(1)) requires the Secretary to issue regulations providing criteria for the disqualification under the Food Stamp Act of 1977 of an approved retail food store or a wholesale food concern that is disqualified from accepting benefits under the special supplemental nutrition program for women, infants, and children established under this section.

Section 1060a of title 10, United States Code, requires the Secretary of Defense to carry out a program to provide special supplemental food benefits to members of the armed forces on duty at stations outside the United States and requires that payments, commodities, and eligibility for benefits under the program are the same as the program under this section.

Section 399(b)(6) of the Public Health Service Act (42 U.S.C. 280c-4(b)(6)) requires that certain home visiting services, including assistance provided under this section, be made available to eligible families in each project operated with a grant.

Section 1920A of the Social Security Act (42 U.S.C. 1396r-1a) permits certain State plans to provide for making medical assistance with respect to health care items and services covered under the State plans available to a child during a presumptive eligibility period that begins on the date a qualified entity determines, inter alia, that an infant or child is eligible to receive assistance under this section, and ends on a specified date.

Section 17(s)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(s)(1)) requires the Secretary to provide to each State agency administering a child and adult care food program under section 17 of that Act with information concerning the special supplemental nutrition program for women, infants, and children authorized under this section.

Section 203(r) of P.L. 105-336, 112 Stat. 3166, Oct. 31, 1998, requires the Secretary to conduct a study on the effect of cost containment practices established by States under the special supplemental nutrition program for women, infants, and children authorized under this section for the selection of vendors and approved food items (other than infant formula) on various factors and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report on the study not later than Oct. 31, 2000, and a final report on the study not later than Oct. 31, 2001.

Section 203(s) of P.L. 105-336, 112 Stat. 3167, Oct. 31, 1998, requires the Comptroller General of the United States to conduct a study of WIC services and submit a report on the study to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than Oct. 31, 2001.

currence of health problems, including drug abuse,¹⁷⁻³ and improve the health status of these persons.

(b)¹⁷⁻⁴ As used in this section—

(1) “Breastfeeding women” means women up to one year postpartum who are breastfeeding their infants.

(2) “Children” means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) “Competent professional authority” means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) “Costs for nutrition services and administration” means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) “Infants” means persons under one year of age.

(6) “Local agency” means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.¹⁷⁻⁵

(7) “Nutrition education” means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socioeconomic preferences.

(8) “Nutritional risk” means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or

¹⁷⁻³ Section 3201(1) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, added the phrase “including drug abuse.”

¹⁷⁻⁴ Section 341(a) of P.L. 99-500, 100 Stat. 1783-364, Oct. 18, 1986, amended this section by striking out paragraph (1) (defining “administrative costs”); redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and by inserting a new paragraph (4). Section 341(a) of P.L. 99-591, 100 Stat. 3341-367, Oct. 30, 1986, and section 4301(a) of P.L. 99-500, 100 Stat. 4075, Nov. 14, 1986, made the same amendments.

Section 1060a(f) of title 10, United States Code, incorporates the definitions of “nutrition education” and “supplemental foods” from this subsection.

¹⁷⁻⁵ Section 1042(2) of the Pro-Children Act of 1994 (20 U.S.C. 6082(2)) includes within the definition of “children’s services”, for purposes of part C of title X of such Act (relating to environmental tobacco smoke), the provision of certain services that are administered by the Secretary of Agriculture in the case of a clinic (as defined in 7 CFR 246.2) under section 17(b)(6) of this Act, but excludes facilities (other than clinics) where coupons are redeemed under this Act.

endanger health, (D)¹⁷⁻⁶ conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse, or (E)¹⁷⁻⁷ conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and¹⁷⁻⁸ migrancy.¹⁷⁻⁹

(9) "Plan of operation and administration" means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) "Postpartum women" means women up to six months after termination of pregnancy.

(11) "Pregnant women" means women determined to have one or more fetuses in utero.

(12) "Secretary" means the Secretary of Agriculture.

(13) "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15)¹⁷⁻¹⁰ "Homeless individual" means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation of not more than 365 days¹⁷⁻¹¹ in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

¹⁷⁻⁶ Section 204(a)(1) and (2) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994, redesignated former subparagraph (D) as subparagraph (E) and inserted new subparagraph (D).

¹⁷⁻⁷ See note 17-6.

¹⁷⁻⁸ Section 204(a)(3) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994, amended this subparagraph by striking "alcoholism and drug addiction, homelessness, and" and inserting "homelessness and".

¹⁷⁻⁹ Section 204 of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992, amended this subparagraph by inserting before the period the following: ", homelessness, and migrancy".

¹⁷⁻¹⁰ Section 212(a) of P.L. 100-435, 102 Stat. 1657, Sept. 19, 1988, added a new paragraph (15) defining "Homeless individual".

¹⁷⁻¹¹ Section 729(a)(1) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended this clause by inserting "of not more than 365 days" after "accommodation".

(16)¹⁷⁻¹² “Drug abuse education” means—

(A) the provision of information concerning the dangers of drug abuse; and

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals.

(17)¹⁷⁻¹³ “Competitive bidding” means a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought for use in the program authorized by this section.

(18)¹⁷⁻¹⁴ “Rebate” means the amount of money refunded under cost containment procedures to any State agency from the manufacturer or other supplier of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each such agency’s program established under this section.

(19)¹⁷⁻¹⁵ “Discount” means, with respect to a State agency that provides program foods to participants without the use of retail grocery stores (such as a State that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other supplier of the particular food product as the result of the purchase of program food by each such State agency, or its representative, from the supplier.

(20)¹⁷⁻¹⁶ “Net price” means the difference between the manufacturer’s wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency.

(c)¹⁷⁻¹⁷(1) The Secretary may carry out a special supplemental nutrition program¹⁷⁻¹⁸ to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant,

¹⁷⁻¹²Section 3201(2) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, added a new paragraph (16) defining “Drug abuse education”. Section 729(a)(2) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck former subparagraph (C).

¹⁷⁻¹³Paragraph (17) was originally added by section 123(a)(1) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989. Section 203 of P.L. 102-512, Oct. 24, 1992, completely revised paragraph (17) and added paragraphs (18) through (20). Section 209 of P.L. 102-512, Oct. 24, 1992, provided that the authority provided by title II of P.L. 102-512 and the amendments made by such title (except with regard to section 17(h)(8)(J)) terminates on September 30, 1994. Effective October 1, 1994, section 204(o)(2) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994, repealed section 209 of P.L. 102-512. Although the repeal of such section 209 is effective after the amendments made by such section 209 terminate, the repeal is treated as effective to effectuate the probable intent of Congress.

¹⁷⁻¹⁴See note 17-13.

¹⁷⁻¹⁵See note 17-13.

¹⁷⁻¹⁶See note 17-13.

¹⁷⁻¹⁷Section 729(b) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck former paragraph (5) of this subsection. Paragraph (5) originally added by section 204(b) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994.

¹⁷⁻¹⁸Section 204(w)(1)(B) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph by striking “special supplemental food program” and inserting “special supplemental nutrition program”.

Section 204(w)(3) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, provides that any reference to the special supplemental food program established under this section in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under this section.

postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

- (A) the food stamp program;
- (B) any program under which foods are distributed to needy families in lieu of food stamps; and
- (C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.¹⁷⁻¹⁹

(2) Subject to amounts appropriated to carry out this section under subsection (g)¹⁷⁻²⁰—

- (A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and
- (B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973¹⁷⁻²¹ [(7 U.S.C. 612c note)] shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4)¹⁷⁻²² A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d)¹⁷⁻²³(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, in-

¹⁷⁻¹⁹ Section 212(b) of P.L. 100-435, 102 Stat. 1658, Sept. 19, 1988, amended this sentence by designating existing language as clauses (A) and (B) and adding clause (C).

¹⁷⁻²⁰ Section 203(d)(1) of P.L. 96-499, 94 Stat. 2601, Dec. 5, 1980, amended this paragraph by striking reference to fiscal years 1981 and 1982 and inserting instead reference to fiscal year 1981 and each succeeding fiscal year through September 30, 1984. Section 314(1) of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986, further amended this subsection by striking reference to specific fiscal years 1981-1984 and inserting instead "Subject to amounts appropriated to carry out this section under subsection (g)". Section 314(1) of P.L. 99-591, 100 Stat. 3341-363, Oct. 30, 1986, and section 4104(1) of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986, made the same revision.

¹⁷⁻²¹ Section 326(b)(1) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (c)(3) by striking "section 1304 of the Food and Agriculture Act of 1977" and inserting "section 4 of the Agriculture and Consumer Protection Act of 1973".

¹⁷⁻²² This paragraph added by section 342(a) of P.L. 99-500, 100 Stat. 1783-364, Oct. 18, 1986. Section 342(a) of P.L. 99-591, 100 Stat. 3341-367, Oct. 30, 1986, and section 4302(a) of P.L. 99-661, 100 Stat. 4075, Nov. 14, 1986, made the same addition.

Section 326(a)(1) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 17(c)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)(4)), as similarly amended first by section 342(a) of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-367) and later by section 4302(a) of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if the later amendment had not been enacted.

¹⁷⁻²³ Section 729(c) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck former paragraph (4) of this subsection. Paragraph (4) originally added by section 343(a) of P.L. 99-

Continued

fants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)¹⁷⁻²⁴(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 9(b) of the Richard B. Russell National School Lunch Act for free and reduced price meals;

(ii)(I) receives food stamps under the Food Stamp Act of 1977; or

(II) is a member of a family that receives assistance under the State program funded¹⁷⁻²⁵ established under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;¹⁷⁻²⁶ or

(iii)(I) receives medical assistance under title XIX of the Social Security Act; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income any basic allowance for quarters received by military service personnel residing off military installations.

(C)¹⁷⁻²⁷ In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3)(A)¹⁷⁻²⁸ Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

500, 100 Stat. 1783-364, Oct. 18, 1986, and section 343(a) of P.L. 99-591, 100 Stat. 3341-367, Oct. 30, 1986, and amended by section 4303(a) of P.L. 99-661, 100 Stat. 4076, Nov. 14, 1986, section 326(a)(2) of P.L. 101-147, 103 Stat. 917, Nov. 10, 1989, and section 204(t)(1) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994.

¹⁷⁻²⁴ Section 123(a)(2) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989, completely revised paragraph (2).

Section 10405(a)(2)(F) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) provides that payments made from the Agent Orange Settlement Fund or a similar fund shall not be considered income or resources in determining eligibility for the amount of benefits under the special supplemental food program for women, infants, and children established under this section.

¹⁷⁻²⁵ Effective July 1, 1997, section 109(h)(1) of P.L. 104-193, 110 Stat. 2171, Aug. 22, 1996, amended this subclause by striking “program for aid to families with dependent children established” and inserting “State program funded”.

¹⁷⁻²⁶ Effective July 1, 1997, section 109(h)(2) of P.L. 104-193, 110 Stat. 2171, Aug. 22, 1996, amended this subclause by inserting before the semicolon the following: “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

¹⁷⁻²⁷ This subparagraph added by section 204(c)(1) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994.

¹⁷⁻²⁸ Section 204(c)(2)(A) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994, inserted “(A)” after “(3)”.

(B)¹⁷⁻²⁹ A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

(C)¹⁷⁻³⁰ PHYSICAL PRESENCE.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

(ii) WAIVERS.—If the agency determines that the requirement of clause (i) would present an unreasonable barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

(I) an infant or child who—

(aa) was present at the initial certification visit; and

(bb) is receiving ongoing health care from a provider other than the local agency; or

(II) an infant or child who—

(aa) was present at the initial certification visit;

(bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and

(cc) has one or more parents who work.

(D)¹⁷⁻³¹ INCOME DOCUMENTATION.—

(i) IN GENERAL.—Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.

(ii) WAIVERS.—A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

¹⁷⁻²⁹ This subparagraph added by section 204(c)(2)(B) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994.

¹⁷⁻³⁰ This subparagraph added by section 203(a)(1) of P.L. 105-336, 112 Stat. 3158, Oct. 31, 1998.

¹⁷⁻³¹ This subparagraph added by section 203(a)(2) of P.L. 105-336, 112 Stat. 3159, Oct. 31, 1998.

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

(E)¹⁷⁻³² ADJUNCT DOCUMENTATION.—In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.

(e)¹⁷⁻³³(1)¹⁷⁻³⁴ The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program.¹⁷⁻³⁵ A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.¹⁷⁻³⁶

(2)¹⁷⁻³⁷ The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education under this section.¹⁷⁻³⁸

(3)¹⁷⁻³⁹ NUTRITION EDUCATION MATERIALS.—

(A) IN GENERAL.—The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(B)¹⁷⁻⁴⁰ SHARING OF MATERIALS.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of

¹⁷⁻³² This subparagraph added by section 203(a)(3) of P.L. 105-336, 112 Stat. 3159, Oct. 31, 1998.

¹⁷⁻³³ Section 729(d)(4) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck former paragraph (6) of this subsection. Paragraph (6) was originally added by section 213(a)(1) of P.L. 101-147, 103 Stat. 912, Nov. 10, 1989, and redesignated in accordance with note 17-36.

¹⁷⁻³⁴ Section 3201(3) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, added “and drug abuse education” both places it appears in this paragraph.

¹⁷⁻³⁵ Section 123(a)(3)(A) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989, struck the last three sentences of paragraph (1).

¹⁷⁻³⁶ This sentence added by section 203(b) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998.

¹⁷⁻³⁷ Section 123(a)(3)(B) and (C) of P.L. 101-147, 103 Stat. 894, Nov. 10, 1989, amended subsection (e) by redesignating paragraph (2) as paragraph (3) and by inserting a new paragraph (2).

¹⁷⁻³⁸ Section 729(d)(1) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended paragraph (2) by striking the former third sentence.

¹⁷⁻³⁹ Section 203(c) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998, amended this paragraph by striking “(3) The” and inserting “(3)” and all that follows through “IN GENERAL.—The”, and added subparagraph (B). See notes 17-23 and 17-37.

¹⁷⁻⁴⁰ See note 17-39.

1973 (7 U.S.C. 612c note; Public Law 93-86) at no cost to that program.

(4)¹⁷⁻⁴¹ The State agency¹⁷⁻⁴²—

(A)¹⁷⁻⁴³ shall provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act (in this section referred to as the ‘medicaid program’);

(B)¹⁷⁻⁴³ shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program; and

(C)¹⁷⁻⁴³ may provide a local agency with materials describing other programs for which a participant in the program may be eligible.

(5)¹⁷⁻⁴⁴ Each¹⁷⁻⁴⁵ local agency shall maintain and make available for distribution a list of local resources for substance abuse counseling and treatment.

(f)(1)¹⁷⁻⁴⁶(A) Each State agency shall submit to the Secretary, by a date specified by the Secretary, an initial¹⁷⁻⁴⁷ date specified by the Secretary, a plan of operation and administration for a fiscal year. After submitting the initial plan, a State shall be required to

¹⁷⁻⁴¹ Section 123(a)(3)(D) of P.L. 101-147, 103 Stat. 895, Nov. 10, 1989, added a second paragraph (3) and paragraph (4). Section 204(d) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994, redesignated the second paragraph (3) and paragraphs (4) and (5) as paragraphs (4), (5), and (6), respectively.

Section 1902(a)(11)(C) of the Social Security Act (42 U.S.C. 1396a(a)(11)(C)) requires a State plan for medical assistance to provide for coordination of the operations under title XIX of such Act with the State’s operations under the special supplemental nutrition program for women, infants, and children under this section.

Section 1902(a)(53) of the Social Security Act (42 U.S.C. 1396a(a)(53)) requires a State plan for medical assistance to provide (A) for notifying all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in this section), or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under this section, and (B) for referring any such individual to the State agency responsible for administering such program.

Section 6506(a)(3)(E) of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239; 42 U.S.C. 701 note) requires the Secretary of Health and Human Resources to develop a model application form for use in applying, simultaneously, for assistance for a pregnant women or a child less than 6 years of age under maternal and child assistance programs, including the WIC program established under this section.

¹⁷⁻⁴² Section 729(d)(2)(A) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck “shall” from this paragraph.

¹⁷⁻⁴³ Section 729(d)(2) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, struck former subparagraph (A), redesignated subparagraphs (B) and (C) as subparagraphs (A) and (B), inserted “shall” before “provide” in subparagraphs (A) and (B), added subparagraph (C), and made grammatical conforming amendments.

¹⁷⁻⁴⁴ See note 17-41.

¹⁷⁻⁴⁵ Section 729(d)(3) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended paragraph (5) by striking “The State agency shall ensure that each” and inserting “Each”.

¹⁷⁻⁴⁶ This paragraph completely revised by section 344(a) of P.L. 99-500, 100 Stat. 1783-365, Oct. 18, 1986 (beginning with State plans for fiscal year 1987). Section 344(a) of P.L. 99-591, 100 Stat. 3341-368, Oct. 30, 1986, and section 4304(a) of P.L. 99-661, 100 Stat. 4076, Nov. 14, 1986, made the same revisions.

¹⁷⁻⁴⁷ Section 729(e)(1)(A)(i) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended subparagraph (A) by striking “annually to the Secretary, by a date specified by the Secretary, a” and inserting “to the Secretary, by a date specified by the Secretary, an initial”.

submit to the Secretary for approval only a substantive change in the plan.¹⁷⁻⁴⁸

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C)¹⁷⁻⁴⁹ The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

(ii) a description of the financial management system of the State agency;

(iii)¹⁷⁻⁵⁰ a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program;

(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;¹⁷⁻⁵¹

(v) a plan to expend funds to carry out the program during the relevant fiscal year;

(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas),¹⁷⁻⁵² if sufficient funds are available to carry out this clause;

(vii)¹⁷⁻⁵³ a plan for¹⁷⁻⁵⁴ reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;

(viii)¹⁷⁻⁵⁵ a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally;

(ix)¹⁷⁻⁵⁶ a plan to provide nutrition education and promote breastfeeding; and

¹⁷⁻⁴⁸ This sentence added by section 729(e)(1)(A)(ii) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996.

¹⁷⁻⁴⁹ Section 8(b) of P.L. 100-237, 101 Stat. 1740, Jan. 8, 1988, amended this subparagraph by striking out “and” at the end of clause (vii), redesignating clause (viii) as clause (ix), and adding a new clause (viii).

¹⁷⁻⁵⁰ This clause completely revised by section 729(e)(1)(B)(i) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996. Previously, this clause was amended by section 9 of P.L. 100-237, 101 Stat. 1741, Jan. 8, 1988, section 3201(4)(A) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, section 123(a)(4)(A)(i) of P.L. 101-147, 103 Stat. 895, Nov. 10, 1989, and section 204(e) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994.

¹⁷⁻⁵¹ Section 212(c) of P.L. 100-435, 102 Stat. 1658, Sept. 19, 1988, inserted “migrants, homeless individuals,” in lieu of “migrants”.

¹⁷⁻⁵² Section 729(e)(1)(B)(ii) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended clause (vi) by inserting after “in the State” the following: “(including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas)”.

¹⁷⁻⁵³ Section 123(a)(4)(A)(ii) of P.L. 101-147, 103 Stat. 895, Nov. 10, 1989, completely revised clause (vii).

¹⁷⁻⁵⁴ Section 729(e)(1)(B)(iii) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended clause (vii) by striking “to provide program benefits” and all that follows through “emphasis on” and inserting “for”.

¹⁷⁻⁵⁵ Section 123(a)(4)(A)(iii) and (iv) of P.L. 101-147, 103 Stat. 895, Nov. 10, 1989, amended this subparagraph by redesignating clauses (viii) and (ix) as clauses (xii) and (xiii), respectively, and inserting new clauses (viii) through (xi).

¹⁷⁻⁵⁶ Section 729(e)(1)(B) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this subparagraph by striking former clauses (ix), (x), and (xii), redesignating clauses (xi) and (xiii) as clauses (ix) and (x), respectively, and making a conforming amendment. For pre-

(x)¹⁷⁻⁵⁷ such other information as the Secretary may reasonably require.¹⁷⁻⁵⁸

(D)¹⁷⁻⁵⁹ The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2)¹⁷⁻⁶⁰ A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time.¹⁷⁻⁶¹ Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall be available at any reasonable time¹⁷⁻⁶² for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.¹⁷⁻⁶³

(6)¹⁷⁻⁶⁴(A)¹⁷⁻⁶⁵ Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Sec-

vious amendments, see note 17-55 and section 8(b) of Public Law 100-237, 101 Stat. 1740, Jan. 8, 1988.

¹⁷⁻⁵⁷ See note 17-56.

¹⁷⁻⁵⁸ Section 729(e)(1)(B)(v) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended this clause by striking "may require" and inserting "may reasonably require".

¹⁷⁻⁵⁹ Section 729(e)(1) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking former subparagraph (D) and by redesignating former subparagraph (E) as subparagraph (D).

¹⁷⁻⁶⁰ This paragraph completely revised by section 345 of P.L. 99-500, 100 Stat. 1783-366, Oct. 18, 1986, to give more flexibility to public comment requirement. Section 345 of P.L. 99-591, 100 Stat. 3341-349, Oct. 30, 1986, and section 4305 of P.L. 99-661, 100 Stat. 4077, Nov. 14, 1986, made the same revisions.

¹⁷⁻⁶¹ Section 204(f) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994, amended this sentence by inserting before the period "and shall" and all that follows through "period of time".

¹⁷⁻⁶² Section 729(e)(3) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended the second sentence of paragraph (5) by striking "at all times be available" and inserting "be available at any reasonable time".

¹⁷⁻⁶³ The second sentence of section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) provides that certain information submitted by retail food stores under the food stamp program may be used by State agencies that administer the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) for purposes of administering such Act.

¹⁷⁻⁶⁴ Section 729(e)(2) and (10) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this subsection by striking former paragraphs (6) and (22) and by redesignating former paragraphs (7) through (21) as paragraphs (6) through (20), and former paragraphs (23) and (24) as paragraphs (21) and (22), respectively.

¹⁷⁻⁶⁵ Section 213(a)(2)(A) of P.L. 101-147, 103 Stat. 912, Nov. 10, 1989, amended this paragraph by inserting "(A)" after "(7)" and adding subparagraph (B).

retary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(B) ¹⁷⁻⁶⁶ State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.

(7) ¹⁷⁻⁶⁷(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, ¹⁷⁻⁶⁸ and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) ¹⁷⁻⁶⁹ Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in such program.

(8) ¹⁷⁻⁷⁰(A) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations

¹⁷⁻⁶⁶ See note 17-65.

¹⁷⁻⁶⁷ This paragraph completely revised by section 346 of P.L. 99-500, 100 Stat. 1783-366, Oct. 18, 1986. Section 346 of P.L. 99-591, 100 Stat. 3341-369, Oct. 30, 1986, and section 4306 of P.L. 99-661, 100 Stat. 4077, Nov. 14, 1986, made the same revisions. Section 326(b)(3)(A) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (f)(8) by striking "persons" each place it appears and inserting "individuals". For redesignation, see note 17-64.

¹⁷⁻⁶⁸ Section 212(c) of P.L. 100-435, 102 Stat. 1657, Sept. 19, 1988, inserted "organizations and agencies serving homeless individuals and shelters for victims of domestic violence," after "Indian tribal organizations,".

¹⁷⁻⁶⁹ Subparagraph (D) added by section 123(a)(4)(B) of P.L. 101-147, 103 Stat. 896, Nov. 10, 1989.

¹⁷⁻⁷⁰ Section 123(a)(4)(C) of P.L. 101-147, 103 Stat. 896, Nov. 10, 1989, amended this paragraph by inserting "(A)" and by adding subparagraph (B). For redesignation, see note 17-64.

issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B)¹⁷⁻⁷¹ Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant.¹⁷⁻⁷²

(9)¹⁷⁻⁷³ If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of eligibility shall remain valid for the period for which the individual was originally certified.

(10)¹⁷⁻⁷⁴ The Secretary shall establish standards for the proper, efficient, and effective administration of the program.¹⁷⁻⁷⁵ If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration¹⁷⁻⁷⁶ as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(11)¹⁷⁻⁷⁷ The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate.¹⁷⁻⁷⁸

(12)¹⁷⁻⁷⁹ A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(13)¹⁷⁻⁸⁰ The State agency may¹⁷⁻⁸¹ (A) provide nutrition education, breastfeeding promotion,¹⁷⁻⁸² and drug abuse education¹⁷⁻⁸³ materials and instruction in languages other than English and (B)

¹⁷⁻⁷¹ See note 17-70.

¹⁷⁻⁷² Section 729(e)(4) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended subparagraph (B) by striking the second sentence.

¹⁷⁻⁷³ Section 326(b)(3)(B) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended this paragraph by striking references to "person" and inserting "individual". For redesignation, see note 17-64.

¹⁷⁻⁷⁴ For redesignation, see note 17-64.

¹⁷⁻⁷⁵ Section 729(e)(5) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this sentence by striking ", including standards that will ensure sufficient State agency staff".

¹⁷⁻⁷⁶ Section 341(b) of P.L. 99-500, 100 Stat. 1783-364, Oct. 18, 1986, amended this section by striking out "administrative funds" each place it appeared in this paragraph and subsections (h)(2), (h)(3), and (h)(4), and inserting instead "fund for nutrition services and administration"; and by striking out "administrative costs" each place it appeared in subsection (h) and inserting instead "costs for nutrition services and administration". Section 341(b) of P.L. 99-591, 100 Stat. 3341-367, Oct. 30, 1986, and section 4301(b) of P.L. 99-661, 100 Stat. 4075, Nov. 14, 1986, made the same substitutions.

¹⁷⁻⁷⁷ For redesignation, see note 17-64.

¹⁷⁻⁷⁸ Section 729(e)(6) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking the third sentence.

¹⁷⁻⁷⁹ For redesignation, see note 17-64.

¹⁷⁻⁸⁰ For redesignation, see note 17-64.

¹⁷⁻⁸¹ Section 729(e)(7) of P.L. 104-193, 110 Stat. 2303, Aug. 22, 1996, amended this paragraph by striking "shall" and inserting "may".

¹⁷⁻⁸² Section 123(a)(4)(D) of P.L. 101-147, 103 Stat. 896, Nov. 10, 1989, amended this paragraph by inserting ", breastfeeding promotion,".

¹⁷⁻⁸³ Section 3201(4)(B) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, amended this paragraph by inserting "and drug abuse education".

use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(14)¹⁷⁻⁸⁴ If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.¹⁷⁻⁸⁵

(15)¹⁷⁻⁸⁶ To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.); and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(16)¹⁷⁻⁸⁷ The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.¹⁷⁻⁸⁸

(17)¹⁷⁻⁸⁹ Notwithstanding subsection (d)(2)(A)(i), not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(18)¹⁷⁻⁹⁰ Each local agency participating in the program under this section may¹⁷⁻⁹¹ provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.

(19)¹⁷⁻⁹² The State agency shall adopt policies that—

¹⁷⁻⁸⁴ This paragraph added by section 347 of P.L. 99-500, 100 Stat. 1783-366, Oct. 18, 1986. Section 347 of P.L. 99-591, 100 Stat. 3341-369, Oct. 30, 1986, and section 4307 of P.L. 99-661, 100 Stat. 4077, Nov. 14, 1986, made the same addition. For redesignation, see note 17-64.

¹⁷⁻⁸⁵ Section 3803(c)(2)(C)(x) of title 31, United States Code, provides administrative remedies for false claims and statements relating to benefits under the special supplemental nutrition program for women, infants, and children established under this section.

¹⁷⁻⁸⁶ This paragraph added by section 11 of P.L. 100-237, 101 Stat. 1741, Jan. 8, 1988. For redesignation, see note 17-64.

¹⁷⁻⁸⁷ This paragraph added by section 212(c)(4) of P.L. 100-435, 102 Stat. 1658, Sept. 19, 1988. Section 326(b)(3)(C) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, corrected the indentation of this paragraph. For redesignation, see note 17-64.

¹⁷⁻⁸⁸ Section 123(a)(4)(E) of P.L. 101-147, 103 Stat. 896, Nov. 10, 1989, amended this paragraph by inserting “and to accomodate” and all that follows through “juvenile detention facilities”. Section 729(e)(8) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking “and to accomodate” and all that follows through “facilities”.

¹⁷⁻⁸⁹ Section 123(a)(4)(F) of P.L. 101-147, 103 Stat. 896, Nov. 10, 1989, added this paragraph and the following 2 paragraphs. This paragraph completely revised by section 204(g) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994. For redesignation, see note 17-64.

¹⁷⁻⁹⁰ See note 17-89.

¹⁷⁻⁹¹ Section 729(e)(9) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking “shall” and inserting “may”.

¹⁷⁻⁹² See note 17-89.

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification.

(20)¹⁷⁻⁹³ Each State agency shall conduct monitoring reviews of each local agency at least biennially.

(21)¹⁷⁻⁹⁴ USE OF CLAIMS FROM VENDORS AND PARTICIPANTS.—A State agency may use funds recovered from vendors and participants, as a result of a claim arising under the program, to carry out the program during—

(A) the fiscal year in which the claim arises;

(B) the fiscal year in which the funds are collected; and

(C) the fiscal year following the fiscal year in which the funds are collected.

(22)¹⁷⁻⁹⁵ The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.

(23)¹⁷⁻⁹⁶ INDIVIDUALS PARTICIPATING AT MORE THAN ONE SITE.—Each State agency shall implement a system designed by the State agency to identify individuals who are participating at more than one site under the program.

¹⁷⁻⁹³ This paragraph added by section 213(a)(2)(B) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989. For redesignation, see note 17-64.

¹⁷⁻⁹⁴ Section 203(d) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998, amended this paragraph in its entirety. This paragraph originally added by section 204(h) of P.L. 103-448, 108 Stat. 4739, Nov. 2, 1994. For redesignation, see note 17-64.

Former paragraph (22) added by section 205 of P.L. 102-512, Oct. 24, 1992. Section 209 of P.L. 102-512, Oct. 24, 1992, provided that the authority provided by title II of P.L. 102-512 and the amendments made by such title (except with regard to section 17(h)(8)(J)) terminates on September 30, 1994. Effective October 1, 1994, section 204(o)(2) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994, repealed section 209 of P.L. 102-512. Although the repeal of such section 209 is effective after the amendments made by such section 209 terminate, the repeal is treated as effective to effectuate the probable intent of Congress. Section 729(e)(2) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, struck former paragraph (22).

¹⁷⁻⁹⁵ This paragraph added by section 204(i) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994. For redesignation, see note 17-64.

¹⁷⁻⁹⁶ This paragraph added by section 203(e) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998.

(24)¹⁷⁻⁹⁷ HIGH RISK VENDORS.—Each State agency shall—

(A) identify vendors that have a high probability of program abuse; and

(B) conduct compliance investigations of the vendors.

(g)¹⁷⁻⁹⁸(1) There are authorized to be appropriated to carry out this section \$2,158,000,000 for the fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1995 through 2003. As authorized by section 3 of the Richard B. Russell National School Lunch Act, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.

(2)¹⁷⁻⁹⁹(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

¹⁷⁻⁹⁷ This paragraph added by section 203(f)(1) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998. Section 203(f)(2) of P.L. 105-336, 112 Stat. 3160, Oct. 31, 1998, requires the Secretary of Agriculture to promulgate (A) not later than March 1, 1999, proposed regulations to carry out this paragraph, and (B) not later than March 1, 2000, final regulations to carry out this paragraph.

¹⁷⁻⁹⁸ Title III of P.L. 96-108, 93 Stat. 838, Nov. 9, 1979, changed the authorization of appropriations for fiscal year 1980 from \$800,000,000 to \$750,000,000.

Section 203(d)(2) of P.L. 96-499, 94 Stat. 2601, Dec. 5, 1980, deleted the specific appropriations authorization for fiscal year 1982 and inserted instead “such sums as may be necessary for the three subsequent fiscal years”.

Section 815 of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981, deleted the prior general authorizations of appropriations for fiscal years 1982-1984 and inserted specific amounts instead.

Amended by section 314 of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986, which designated the first and second sentences as paragraphs (1) and (3), respectively, and completely revised paragraph (1) (as designated) to authorize appropriations for fiscal years 1986-1989.

Section 314 of P.L. 99-591, 100 Stat. 3341-363, Oct. 30, 1986, made the same revision.

Section 4104 of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986, made essentially the same change, but authorized the appropriation of \$1,580,494 for fiscal year 1986 rather than \$1,570,000 as in P.L. 99-500 and 99-591.

Chapter X of P.L. 100-71, 101 Stat. 425, July 11, 1988, deleted specific authorizations of appropriations for fiscal year 1989 and inserted a general authorization instead.

Section 123(a)(5)(A) of P.L. 101-147, 103 Stat. 897, Nov. 10, 1989, completely revised paragraph (1) to authorize appropriations of \$2,158,000,000 for the fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1991, 1992, 1993, and 1994, to authorize the advance appropriations of funds, and to provide that appropriated funds shall remain available until expended.

Section 204(j)(1) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994, amended this paragraph by striking “1991, 1992, 1993, and 1994” and inserting “1995 through 1998”.

Section 203(g) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this paragraph by striking “1998” and inserting “2003”.

Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(h)) exempts the women, infants, and children program from reductions under sequestration deficit reduction orders.

Section 729(f)(2) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, struck paragraph (6) of this subsection. Previously, paragraph (6) added by section 123(a)(5)(E) of P.L. 101-147, 103 Stat. 898, Nov. 10, 1989.

¹⁷⁻⁹⁹ Section 123(a)(5)(B) and (C) of P.L. 101-147, 103 Stat. 897, Nov. 10, 1989, amended subsection (g) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting new paragraphs (2) and (3).

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(3)¹⁷⁻¹⁰⁰ Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than $\frac{1}{3}$ of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than $\frac{1}{4}$ of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legislation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).

(4)¹⁷⁻¹⁰¹ Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5)¹⁷⁻¹⁰² Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed \$5,000,000¹⁷⁻¹⁰³, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing reports on program participant characteristics,¹⁷⁻¹⁰⁴ providing technical assistance to improve State agency administrative

¹⁷⁻¹⁰⁰ See note 17-99.

¹⁷⁻¹⁰¹ This paragraph added by section 348(a) of P.L. 99-500, 100 Stat. 1783-366, Oct. 18, 1986. Section 348(a) of P.L. 99-591, 100 Stat. 3341-369, Oct. 30, 1986, and section 4308(a) of P.L. 99-661, 100 Stat. 4077, Nov. 14, 1986, made the same addition. Subsection (b) of each of these sections provides that:

“(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act.”.

For redesignation, see note 17-99.

¹⁷⁻¹⁰² For redesignation, see note 17-99.

¹⁷⁻¹⁰³ Section 123(a)(5)(D) of P.L. 101-147, 103 Stat. 898, Nov. 10, 1989, amended this paragraph by striking “\$3,000,000” and inserting “\$5,000,000”.

¹⁷⁻¹⁰⁴ Section 729(f)(1) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking “the report required under subsection (d)(4)” and inserting “reports on program participant characteristics”. Previously, section 343(b) of P.L. 99-500, 100 Stat. 1783-364, Oct. 18, 1986, inserted the language “preparing the report required under subsection (d)(4).”. Section 343(b) of P.L. 99-591, 100 Stat. 3341-368, Oct. 30, 1986, and section 4303(b) of P.L. 99-661, 100 Stat. 4076, Nov. 14, 1986, made the same insertion.

systems,¹⁷⁻¹⁰⁵ administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations, and carrying out technical assistance and research evaluation projects of the programs under this section.¹⁷⁻¹⁰⁶

(h)¹⁷⁻¹⁰⁷(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among State agencies for costs incurred by State and local agencies for nutrition services and administration for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued for the fiscal year 1987, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the fiscal year 1987 to reflect the percentage change between—

(I) the value of the index for State and local government purchases, using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 1986; and

(II) the best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

(C)¹⁷⁻¹⁰⁸ REMAINING AMOUNTS.—

(i) IN GENERAL.—Except as provided in clause (ii), in any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to carry out the purposes of subsections (g)(4) and (g)(5).

(ii) BREAST PUMPS.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps.

¹⁷⁻¹⁰⁵ Section 349 of P.L. 99-500, 100 Stat. 1783-367, Oct. 18, 1986, inserted “providing technical assistance to improve State agency administrative systems,”. Section 349 of P.L. 99-591, 100 Stat. 3341-370, Oct. 30, 1986, and section 4309 of P.L. 99-661, 100 Stat. 4078, Nov. 14, 1986, made the same addition.

¹⁷⁻¹⁰⁶ Section 204(k) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994, amended this paragraph by striking “and” before “administration” and by inserting before the period “, and carrying out technical assistance and research evaluation projects of the programs under this section”.

¹⁷⁻¹⁰⁷ Subsection (h) completely revised by section 123(a)(6) of P.L. 101-147, 103 Stat. 898, Nov. 10, 1989. Subsection (h) previously amended by section 203(d)(3) of P.L. 96-499, 92 Stat. 2601, Dec. 5, 1980; sections 314(3), 350, 351, and 352 of P.L. 99-500, 100 Stat. 1783-360, 1783-367, Oct. 18, 1986; section 314(3), 350, 351, and 352 of P.L. 99-591, 100 Stat. 3341-363, 3341-370, Oct. 30, 1986; section 4104(3), 4310, 4311, and 4312 of P.L. 99-661, 100 Stat. 4071, 4078, Oct. 18, 1986; section 8(a) of P.L. 100-237, 101 Stat. 1740, Jan. 8, 1988; and section 3(a) of P.L. 100-356, 102 Stat. 669, June 28, 1988.

¹⁷⁻¹⁰⁸ Section 203(h) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this subparagraph by striking “(C) In” and inserting “(C)” and all that follows through “(i) IN GENERAL.—Except as provided in clause (ii), in”, and by adding clause (ii).

(2)(A)¹⁷⁻¹⁰⁹ For each of the fiscal years 1995 through 2003, the Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula—

(i) shall be designed to take into account—

(I) the varying needs of each State;

(II) the number of individuals participating in each State; and

(III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;

(ii) shall provide for each State agency—

(I) an estimate of the number of participants for the fiscal year involved; and

(II) a per participant grant for nutrition services and administration for such year;

(iii) shall provide for a minimum grant amount for State agencies; and

(iv)¹⁷⁻¹¹⁰ may provide funds¹⁷⁻¹¹¹ to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(B)(i) Except as provided in clause (ii) and subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).

(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)¹⁷⁻¹¹² higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.

(C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the

¹⁷⁻¹⁰⁹ Section 206 of P.L. 102-512, Oct. 24, 1992, added clause (iv) to the second sentence of this subparagraph and made conforming amendments to this subparagraph. Section 209 of P.L. 102-512, Oct. 24, 1992, provided that the authority provided by title II of P.L. 102-512 and the amendments made by such title (except with regard to section 17(h)(8)(J)) terminates on September 30, 1994. Effective October 1, 1994, section 204(o)(2) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994, repealed section 209 of P.L. 102-512. Although the repeal of such section 209 is effective after the amendments made by such section 209 terminate, the repeal is treated as effective to effectuate the probable intent of Congress. Section 204(j)(2) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994, amended paragraph (2)(A) by striking "1990, 1991, 1992, 1993 and 1994" and inserting "1995 through 1998". Section 203(i)(1) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended paragraph (2)(A) by striking "1998" and inserting "2003".

¹⁷⁻¹¹⁰ See note 17-109.

¹⁷⁻¹¹¹ Section 203(i)(2) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this clause by striking "to the extent funds are not already provided under subparagraph (I)(v) for the same purpose."

¹⁷⁻¹¹² Section 203(i)(3) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this clause by striking "15 percent" and inserting "10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)".

Secretary may provide additional amounts to, or recover amounts from, any State agency.

(3)¹⁷⁻¹¹³(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—

(i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—

(I) $\frac{1}{6}$ of the amounts expended by the State for costs of nutrition services and administration; and

(II) except as otherwise provided in subparagraphs (F) and (G), an amount¹⁷⁻¹¹⁴ equal to a proportionate share of the national minimum breastfeeding promotion expenditure, as described in subparagraph (E),¹⁷⁻¹¹⁵ with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and

(ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).

(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of breastfeeding promotion and support activities if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(E)¹⁷⁻¹¹⁶ For each fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

(i) equal to \$21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women

¹⁷⁻¹¹³Section 203(i)(4)(B) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, struck former subparagraphs (F) and (G). Former subparagraphs (F) and (G) added by section 204(l)(2) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994.

¹⁷⁻¹¹⁴Section 204(l)(1)(A) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994, amended this subclause by striking "an amount" and inserting "except as otherwise provided in subparagraphs (F) and (G), an amount".

¹⁷⁻¹¹⁵Section 204(l)(1)(B) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994, amended this subclause by striking "\$8,000,000," and inserting "the national minimum breastfeeding promotion expenditure, as described in subparagraph (E)."

¹⁷⁻¹¹⁶Subparagraph (E) added by section 204(l)(2) of P.L. 103-448, 108 Stat. 4740, Nov. 2, 1994. Section 203(i)(4)(A) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this subparagraph by striking "In the case" and all that follows through "subsequent fiscal year," and inserting "For each fiscal year,".

and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and

(ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

(4) The Secretary shall—

(A) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;

(B) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;

(C) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration;

(D) require the State agency to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding; and

(E)¹⁷⁻¹¹⁷ not later than 1 year after the date of enactment of this subparagraph, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program.¹⁷⁻¹¹⁸

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary,¹⁷⁻¹¹⁹ convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term “acceptable measures” includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount

¹⁷⁻¹¹⁷ Section 204(m) of P.L. 103-448, 108 Stat. 4741, Nov. 2, 1994, amended this paragraph by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “; and”, and by adding subparagraph (E).

¹⁷⁻¹¹⁸ Section 729(g)(1)(A) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this subparagraph by striking “and, on” and all that follows through “(d)(4)”.

¹⁷⁻¹¹⁹ Section 203(i)(5) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this subparagraph by striking “achieves” and all that follows through “such State agency may” and inserting “submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary.”

to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

- (A) local agency staffing needs;
- (B) density of population;
- (C) number of individuals served; and
- (D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

- (A) a new local agency;
- (B) a new cost containment measure; or
- (C) a significant change in an existing cost containment measure.

(8) ¹⁷⁻¹²⁰(A)(i) Except as provided in subparagraphs (B) and (C)(iii), ¹⁷⁻¹²¹any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

- (I) a competitive bidding system; or
- (II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels rise), such as—

- (I) the number of infants who would not be expected to receive the contract brand of infant formula under a competitive bidding system;
- (II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and
- (III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing partici-

¹⁷⁻¹²⁰Section 729(g)(1)(B) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this paragraph by striking former subparagraphs (A), (C), and (M) and by redesignating former subparagraphs (B) and (D) through (L) as subparagraphs (A) and (B) through (J), respectively. Section 729(g)(2) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, provided that the amendments made by section 729(g)(1) of the Act shall not apply to a contract for the procurement of infant formula under this paragraph that is in effect on Aug. 22, 1996. Former subparagraph (M) of this paragraph added by section 204(q) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994.

¹⁷⁻¹²¹Section 729(g)(1)(B)(v) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this clause by striking “subparagraphs (C), (D), and (E)(iii), in carrying out subparagraph (A),” and inserting “subparagraphs (B) and (C)(iii).”

pants for conversion to a new or alternate cost containment system).

(iii) ¹⁷⁻¹²² COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award contracts to bidders offering the lowest net price unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

(B) ¹⁷⁻¹²³(i) ¹⁷⁻¹²⁴ The Secretary shall waive the requirement of subparagraph (A) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (A) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information on a timely basis ¹⁷⁻¹²⁵ to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(C) ¹⁷⁻¹²⁶(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies ¹⁷⁻¹²⁷ that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (A) ¹⁷⁻¹²⁸ in the case of any Indian State agency that has not more than 1,000 participants.

(D) ¹⁷⁻¹²⁹ No State may enter into a cost containment contract (in this subparagraph referred to as the original contract”) that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured

¹⁷⁻¹²² This clause added by section 203(j) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998.

¹⁷⁻¹²³ For redesignation, see note 17-120.

¹⁷⁻¹²⁴ Section 729(g)(1)(B)(vi) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this clause by striking “subparagraph (B)” each place it appears and inserting “subparagraph (A)”.

¹⁷⁻¹²⁵ Section 204(n) of P.L. 103-448, 108 Stat. 4738, Nov. 2, 1994, amended this clause by striking “at 6-month intervals” and inserting “on a timely basis”.

¹⁷⁻¹²⁶ For redesignation, see note 17-120.

¹⁷⁻¹²⁷ Section 207 of P.L. 102-512, Oct. 24, 1992, amended this clause by striking “that do not have large caseloads and”. Section 209 of P.L. 102-512, Oct. 24, 1992, provided that the authority provided by title II of P.L. 102-512 and the amendments made by such title (except with regard to section 17(h)(8)(J)) terminates on September 30, 1994. Effective October 1, 1994, section 204(o)(2) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994, repealed section 209 of P.L. 102-512. Although the repeal of such section 209 is effective after the amendments made by such section 209 terminate, the repeal is treated as effective to effectuate the probable intent of Congress.

¹⁷⁻¹²⁸ Section 729(g)(1)(B)(vii) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this clause by striking “subparagraph (B)” and inserting “subparagraph (A)”.

¹⁷⁻¹²⁹ For redesignation, see note 17-120.

bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(E)¹⁷⁻¹³⁰ The Secretary shall offer to solicit bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula manufacturers and State agencies. The Secretary shall make the offer to State agencies once every 12 months. Each such bid solicitation shall only take place if two or more State agencies request the Secretary to perform the solicitation. For such State agencies, the Secretary shall solicit bids and select the winning bidder for a cost containment contract to be entered into by State agencies and infant formula manufacturers or suppliers.

(F)¹⁷⁻¹³¹ In soliciting bids for contracts for infant formula for the program authorized by this section, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates or discounts are solicited for milk-based and soy-based infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the program.

(G)¹⁷⁻¹³² To reduce the costs of any supplemental foods, the Secretary may¹⁷⁻¹³³ make available additional funds to State agencies out of the funds otherwise available under paragraph (1)(A) for nutrition services and administration in an amount not exceeding one half of 1 percent of the amounts to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(H)¹⁷⁻¹³⁴(i) Any person, company, corporation, or other legal entity that submits a bid to supply infant formula to carry out the program authorized by this section and announces or otherwise discloses the amount of the bid, or the rebate or discount practices of such entities, in advance of the time the bids are opened by the Secretary or the State agency, or any person, company, corporation, or other legal entity that makes a statement (prior to the opening of bids) relating to levels of rebates or discounts, for the purpose of influencing a bid submitted by any other person, shall be ineligible to submit bids to supply infant formula to the program for the bidding in progress for up to 2 years from the date the bids are opened and shall be subject to a civil penalty of up to \$100,000,000, as determined by the Secretary to provide restitution to the program for harm done to the program. The Secretary shall issue regulations providing such person, company, corporation, or other legal entity

¹⁷⁻¹³⁰ Section 729(g)(1)(B)(ii) of P.L. 104-193, 110 Stat. 2304, Aug. 22, 1996, amended this subparagraph by striking "(i)" and striking clauses (ii) through (ix). For redesignation of subparagraph, see note 17-120.

Previously, section 204 of P.L. 102-512, Oct. 24, 1992, completely revised subparagraph (G) and added subparagraphs (H) through (K). Section 209 of P.L. 102-512, Oct. 24, 1992, provided that the authority provided by title II of P.L. 102-512 and the amendments made by such title (except with regard to section 17(h)(8)(J)) terminates on September 30, 1994. Effective October 1, 1994, section 204(o)(2) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994, repealed section 209 of P.L. 102-512. Although the repeal of such section 209 is effective after the amendments made by such section 209 terminate, the repeal is treated as effective to effectuate the probable intent of Congress.

Former clause (ix) of the subparagraph added by section 204(o)(1) of P.L. 103-448, 108 Stat. 4741, Nov. 2, 1994.

¹⁷⁻¹³¹ See notes 17-120 and 17-130.

¹⁷⁻¹³² See notes 17-120 and 17-130.

¹⁷⁻¹³³ Section 729(g)(1)(B)(iii) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this subparagraph by striking "Secretary—" and all that follows through "(v) may" and inserting "Secretary may".

¹⁷⁻¹³⁴ See notes 17-120 and 17-130.

appropriate notice, and an opportunity to be heard and to respond to charges.

(ii) The Secretary shall determine the length of the disqualification, and the amount of the civil penalty referred to in clause (i) based on such factors as the Secretary by regulation determines appropriate.

(iii) Any person, company, corporation, or other legal entity disqualified under clause (i) shall remain obligated to perform any requirements under any contract to supply infant formula existing at the time of the disqualification and until each such contract expires by its terms.

(I) ¹⁷⁻¹³⁵ Not later than the expiration of the 180-day period beginning on the date of enactment of this subparagraph, the Secretary shall prescribe regulations to carry out this paragraph.

(J) ¹⁷⁻¹³⁶ A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.

(9) For purposes of this subsection, the term “cost containment measure” means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration.

(10) ¹⁷⁻¹³⁷(A) For each of fiscal years 1995 through 2003, ¹⁷⁻¹³⁸ the Secretary shall use for the purposes specified in subparagraph (B), \$10,000,000 or the amount of nutrition services and administration funds and supplemental foods funds ¹⁷⁻¹³⁹ for the prior fiscal year that has not been obligated, whichever is less.

(B) Funds under subparagraph (A) shall be used for—

(i) development of infrastructure for the program under this section, including management information systems;

(ii) special State projects of regional or national significance to improve the services of the program under this section; and

(iii) special breastfeeding support and promotion projects, including projects to assess the effectiveness of particular breastfeeding promotion strategies and to develop State or local agency capacity or facilities to provide quality breastfeeding services.

(11) ¹⁷⁻¹⁴⁰ CONSIDERATION OF PRICE LEVELS OF RETAIL STORES FOR PARTICIPATION IN PROGRAM.—

(A) IN GENERAL.—For the purpose of promoting efficiency and to contain costs under the program, a State agency shall, in selecting a retail store for participation in the program, take into consideration the prices that the

¹⁷⁻¹³⁵ See notes 17-120 and 17-130.

¹⁷⁻¹³⁶ This subparagraph added by section 204(p) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994. For redesignation, see note 17-120.

¹⁷⁻¹³⁷ Paragraph (10) added by section 204(r) of P.L. 103-448, 108 Stat. 4742, Nov. 2, 1994.

¹⁷⁻¹³⁸ Section 203(k) of P.L. 105-336, 112 Stat. 3161, Oct. 31, 1998, amended this subparagraph by striking “1998” and inserting “2003”.

¹⁷⁻¹³⁹ Section 203(n)(2)(A) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, amended this subparagraph by inserting after “nutrition services and administration funds” the following: “and supplemental foods funds”.

¹⁷⁻¹⁴⁰ Paragraph (11) added by section 203(l)(1) of P.L. 105-336, 112 Stat. 3162, Oct. 31, 1998. Section 203(l)(2) of P.L. 105-336, 112 Stat. 3162, Oct. 31, 1998, requires the Secretary of Agriculture to promulgate (A) not later than March 1, 1999, proposed regulations to carry out paragraph (11), and (B) not later than March 1, 2000, final regulations to carry out paragraph (11).

store charges for foods under the program as compared to the prices that other stores charge for the foods.

(B) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not subsequently raise prices to levels that would otherwise make the store ineligible for participation in the program.

(12)¹⁷⁻¹⁴¹ MANAGEMENT INFORMATION SYSTEM PLAN.—

(A) IN GENERAL.—In consultation with State agencies, vendors, and other interested persons, the Secretary shall establish a long-range plan for the development and implementation of management information systems (including electronic benefit transfers) to be used in carrying out the program.

(B) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on actions taken to carry out subparagraph (A).

(C) INTERIM PERIOD.—Prior to the date of submission of the report of the Secretary required under subparagraph (B), a State agency may not require retail stores to pay the cost of systems or equipment that may be required to test electronic benefit transfer systems.

(i)¹⁷⁻¹⁴²(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for food benefits under subsection (h)(1)(C)¹⁷⁻¹⁴³ on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)¹⁷⁻¹⁴⁴(A) Notwithstanding paragraph (2) and subject to subparagraph (B)—

¹⁷⁻¹⁴¹ Paragraph (12) added by section 203(m) of P.L. 105-336, 112 Stat. 3162, Oct. 31, 1998.

¹⁷⁻¹⁴² Section 353(a) of P.L. 99-500, 100 Stat. 1783-367, Oct. 18, 1986, amended this section by designating the first through fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively, and by inserting after newly designated paragraph (2) a new paragraph (3). Section 353(a) of P.L. 99-591, 100 Stat. 3341-370, Oct. 30, 1986, and section 4313(a) of P.L. 99-661, 100 Stat. 4078, Nov. 14, 1986, made the same amendments.

¹⁷⁻¹⁴³ Section 123(a)(7)(A) of P.L. 101-147, 103 Stat. 902, Nov. 10, 1989, amended this paragraph by striking "funds provided in accordance with this section" and inserting "amounts made available for food benefits under subsection (h)(1)(C)".

¹⁷⁻¹⁴⁴ This paragraph added by section 353(a) of P.L. 99-500, 100 Stat. 1783-367, Oct. 18, 1986. Section 353(a) of P.L. 99-591, 100 Stat. 3341-370, Oct. 30, 1986, and section 4313(a) of P.L. 99-661, 100 Stat. 4078, Nov. 14, 1986, made the same addition. Section 12 of P.L. 100-237, 101 Stat. 1742, Jan. 8, 1988, amended this paragraph by inserting "and subject to subparagraphs (B) and (C)" after "paragraph (2)"; substituting "and" for "or" at the end of clause (i); and adding a new subparagraph (C) at the end of the paragraph. Section 203(n)(1)(A) of P.L. 105-336, 112 Stat. 3162, Oct. 31, 1998, amended this subparagraph by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)".

Section 203(n)(2)(B)(i) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, struck former subparagraphs (C) through (G) of this paragraph. Former subparagraph (D) added by section 3(b) of P.L. 100-356, 102 Stat. 670, June 28, 1988, and amended by section 123(a)(7)(B) of P.L. 101-147, 103 Stat. 903, Nov. 10, 1989. Former subparagraphs (E), (F), and (G) of subsection (i)(3) added by section 1 of P.L. 101-330, 104 Stat. 311, July 12, 1990.

(i) ¹⁷⁻¹⁴⁵(I) not more than 1 percent (except as provided in subparagraph (C)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(II) not more than 1 percent of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

(ii) ¹⁷⁻¹⁴⁶(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

(II) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than $\frac{1}{2}$ of 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for the development of a management information system, including an electronic benefit transfer system, during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) ¹⁷⁻¹⁴⁷ The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

¹⁷⁻¹⁴⁵ Section 203(n)(1)(B) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, amended clauses (i) and (ii) in their entirety. Previously, an effective date for former clause (i) was provided by section 353(b) of P.L. 99-500, 100 Stat. 1783-367, Oct. 18, 1986, section 353(b) of P.L. 99-591, 100 Stat. 3341-370, Oct. 30, 1986, and section 4313(b) of P.L. 99-661, 100 Stat. 4078, Nov. 14, 1986, and former clause (i) was amended by section 204(s)(1) of P.L. 103-448, 108 Stat. 4743, Nov. 2, 1994.

¹⁷⁻¹⁴⁶ See note 17-145.

¹⁷⁻¹⁴⁷ This subparagraph added by section 204(s)(2) of P.L. 103-448, 108 Stat. 4743, Nov. 2, 1994, and redesignated by section 203(n)(2)(B)(ii) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998. See note 17-144.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7)¹⁷⁻¹⁴⁸ In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.

(j)¹⁷⁻¹⁴⁹(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the "Secretaries") shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods and nutrition education under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

(2) The initiative shall also include—

(A) activities to improve the coordination of the provision of supplemental foods and nutrition education under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

(3) The initiative may include—

(A) outreach and technical assistance for State and local agencies and the facilities described in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

(B) demonstration projects in selected State or local areas; and

(C) such other activities as the Secretaries find are appropriate.

(4)(A) Not later than April 1, 1995, the Secretaries shall provide to Congress a notification concerning the actions the Secretaries intend to take to carry out the initiative.

(B) Not later than July 1, 1996, the Secretaries shall provide to Congress a notification concerning the actions the Secretaries are taking under the initiative or actions the Secretaries intend to take under the initiative as a result of their experience in implementing the initiative.

(C) On completion of the initiative, the Secretaries shall provide to Congress a notification concerning an evaluation of the ini-

¹⁷⁻¹⁴⁸ Paragraph (7) added by section 123(a)(7)(C) of P.L. 101-147, 103 Stat. 902, Nov. 10, 1989.

¹⁷⁻¹⁴⁹ Section 204(t)(2) of P.L. 103-448, 108 Stat. 4743, Nov. 2, 1994, struck former subsection (j) (relating to migrant reports), as amended by section 123(a)(8) of P.L. 101-147, 103 Stat. 902, Nov. 10, 1989. Section 204(u) of P.L. 103-448, 108 Stat. 4743, Nov. 2, 1994, added a new subsection (j).

tiative by the Secretaries and a plan of the Secretaries to further the goals of the initiative.

(5) As used in this subsection:

(A) The term “community health center” has the meaning given the term in section 330(a) of the Public Health Service Act (42 U.S.C. 254c(a)).

(B) The term “migrant health center” has the meaning given the term in section 329(a)(1) of such Act (42 U.S.C. 254b(a)(1)).

(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the “Council”) composed of 24¹⁷⁻¹⁵⁰ members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977 [(7 U.S.C. 612c note)]; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental nutrition program;¹⁷⁻¹⁵¹ one member shall be a person involved at the retail sales level of food in the special supplemental nutrition program;¹⁷⁻¹⁵¹ two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1 member shall be an expert in the promotion of breast feeding;¹⁷⁻¹⁵² one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.¹⁷⁻¹⁵³

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years.

¹⁷⁻¹⁵⁰Section 3201(5)(A) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, changed the composition of the Council from twenty-one to twenty-three members. Section 123(a)(9)(A) of P.L. 101-147, 103 Stat. 903, Nov. 10, 1989, changed the composition of the Council from twenty-three to 24 members.

¹⁷⁻¹⁵¹Section 204(w)(1)(C) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph by striking “special supplemental food program” each place it appears and inserting “special supplemental nutrition program”.

¹⁷⁻¹⁵²Section 123(a)(9)(B) of P.L. 101-147, 103 Stat. 903, Nov. 10, 1989, added this clause providing for 1 member who is an expert in the promotion of breast feeding.

¹⁷⁻¹⁵³Section 3201(5)(B) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, added these last two clauses providing for the area of expertise for the 2 new members added by section 3501(5)(A) of this Act.

Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Council shall elect¹⁷⁻¹⁵⁴ a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4)¹⁷⁻¹⁵⁵ The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(5)¹⁷⁻¹⁵⁶ Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(1) Foods available under section 416 of the Agriculture Act of 1949 [(7 U.S.C. 1431)], including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935 [(7 U.S.C. 612c)] may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m)¹⁷⁻¹⁵⁷(1) Subject to the availability of funds appropriated for the purposes of this subsection, and as specified in this subsection, the Secretary shall award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance under subsection (c), or those who are on the waiting list to receive the assistance, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets, as defined in the State plans submitted under this subsection.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) ensure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless the State agrees to provide State, local, or private funds for the program in an amount that is equal to not less

¹⁷⁻¹⁵⁴ Section 729(h) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this paragraph by striking "Secretary shall designate" and inserting "Council shall elect".

¹⁷⁻¹⁵⁵ Section 101 of P.L. 105-362, 112 Stat. 3281, Nov. 10, 1998, struck former paragraph (4) and redesignated former paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

¹⁷⁻¹⁵⁶ See note 17-155.

¹⁷⁻¹⁵⁷ Subsection (m) was amended in its entirety by section 3 of the WIC Farmers' Market Nutrition Act of 1992, P.L. 102-314, July 2, 1992, effective October 1, 1991. Subsection was originally added by section 501 of P.L. 100-435, 102 Stat. 1668, Sept. 19, 1988, and amended by section 326(b)(4) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989.

Section 204(v)(12) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, requires the Secretary to promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary.

than 30 percent of the total cost of the program, which may be satisfied from program income or¹⁷⁻¹⁵⁸ State contributions that are made for similar programs. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.¹⁷⁻¹⁵⁹

(4) Subject to paragraph (6), the Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which a State plan is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary shall rank order the State plans according to the criteria of operation set forth in this subsection, and award grants accordingly. The Secretary shall take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits a State plan.

(5) Each State that receives a grant under this subsection shall ensure that the program for which the grant is received complies with the following requirements:

(A) Individuals who are eligible to receive Federal benefits under the program shall only be individuals who are receiving assistance under subsection (c), or who are on the waiting list to receive the assistance.

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefits received by any recipient under the program may not be—

(i) less than \$10 per year; or

(ii) more than \$20 per year.

(D) The coupon issuance process under the program shall be designed to ensure that coupons are targeted to areas with—

(i) the highest concentration of eligible individuals;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary and that maximize the availability of benefits to eligible individuals.

(E) The coupon redemption process under the program shall be designed to ensure that the coupons may be—

(i) redeemed only by producers authorized by the State to participate in the program; and

(ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may use for administration of the program in any fiscal year

¹⁷⁻¹⁵⁸ Section 203(o)(1) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, amended this sentence by inserting "program income or" after "satisfied from".

¹⁷⁻¹⁵⁹ This sentence added by section 204(v)(1) of P.L. 103-448, 108 Stat. 4744, Nov. 2, 1994.

not more than 17 percent¹⁷⁻¹⁶⁰ of the total amount of program funds.

(ii)¹⁷⁻¹⁶¹ During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(iii) The provisions of clauses (i) and (ii) with respect to the use of program funds¹⁷⁻¹⁶² shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements of paragraph (3).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the program.

(6)(A)¹⁷⁻¹⁶³ The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year.

(B)(i) Subject to the availability of appropriations, if a State provides the amount of matching funds required under paragraph (3), the State shall receive assistance under this subsection in an amount that is not less than the amount of such assistance that the State received in the most recent fiscal year in which it received such assistance.

(ii) If amounts appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under paragraph (6) the amount that the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced, except that (if sufficient funds are available) each State shall receive at least \$75,000¹⁷⁻¹⁶⁴ or the amount that the State received for the prior fiscal year if that amount is less than \$75,000.¹⁷⁻¹⁶⁴

(C) In providing funds to¹⁷⁻¹⁶⁵ a State that received assistance under this subsection in the previous fiscal year, the Secretary shall consider—

(i) the availability of any such assistance not spent by the State during the program year for which the assistance was received;

¹⁷⁻¹⁶⁰ Section 204(v)(2)(A) of P.L. 103-448, 108 Stat. 4744, Nov. 2, 1994, amended this clause by striking "15 percent" and inserting "17 percent".

¹⁷⁻¹⁶¹ Clause (ii) amended in its entirety by section 204(v)(2)(B) of P.L. 103-448, 108 Stat. 4744, Nov. 2, 1994.

¹⁷⁻¹⁶² Section 204(v)(2)(C) of P.L. 103-448, 108 Stat. 4744, Nov. 2, 1994, amended this clause by striking "for the administration of the program".

¹⁷⁻¹⁶³ Subparagraph (A) amended in its entirety by section 204(v)(3) of P.L. 103-448, 108 Stat. 4744, Nov. 2, 1994.

¹⁷⁻¹⁶⁴ Section 204(v)(4) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this clause by striking "\$50,000" each place it appears and inserting "\$75,000".

¹⁷⁻¹⁶⁵ Section 203(o)(2)(A) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, amended this subparagraph by striking "serve additional recipients in".

(ii)¹⁷⁻¹⁶⁶ documentation that demonstrates that—

(I) there is a need for an increase in funds; and

(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;

(iii) demonstrated ability to satisfactorily operate the existing program; and

(iv)¹⁷⁻¹⁶⁷ whether, in the case of a State that intends to use any funding provided under subparagraph (G)(i) to increase the value of the Federal share of the benefits received by a recipient, the funding provided under subparagraph (G)(i) will increase the rate of coupon redemption.

(D)(i) A State that desires to receive a grant under this subsection shall submit, for each fiscal year, a State plan to the Secretary by November 15 of each year.¹⁷⁻¹⁶⁸

(ii) Each State plan submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by the program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(iii) The criteria developed by the State as required by clause (ii)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the program.

(E) The Secretary shall establish objective criteria for the approval and ranking of State plans submitted under this paragraph.

(F)¹⁷⁻¹⁶⁹(i) An amount equal to 75 percent¹⁷⁻¹⁷⁰ of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States participating in the program whose State plan¹⁷⁻¹⁷¹ is approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans,¹⁷⁻¹⁷² the unallocated amount shall be applied toward satisfying any unmet need of States that have not participated in the program in the prior fiscal year, and whose State plans have been approved.

(ii) An amount equal to 25 percent¹⁷⁻¹⁷³ of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States that have not participated in the program in the prior fiscal year, and whose State plans have been approved by the

¹⁷⁻¹⁶⁶Section 203(o)(2)(B) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, amended this clause in its entirety.

¹⁷⁻¹⁶⁷Section 203(o)(2)(C) and (D) of P.L. 105-336, 112 Stat. 3163, Oct. 31, 1998, added clause (iv) and made a conforming amendment to clause (iii).

¹⁷⁻¹⁶⁸Section 204(v)(5) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this clause by striking "at such time and in such manner as the Secretary may reasonably require" and inserting "by November 15 of each year".

¹⁷⁻¹⁶⁹Section 203(o)(3) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998, struck former subparagraph (F) as redesignated former subparagraph (G) as subparagraph (F).

¹⁷⁻¹⁷⁰Section 204(v)(6)(A) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this clause by striking "45 to 55 percent" and inserting "75 percent".

¹⁷⁻¹⁷¹Section 203(o)(4)(A)(i) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998, amended this sentence by striking "that wish" and all follows through "to do so" and inserting "whose State plan".

¹⁷⁻¹⁷²Section 203(o)(4)(A)(ii) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998, amended this sentence by striking "for additional recipients".

¹⁷⁻¹⁷³Section 204(v)(6)(B) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this clause by striking "45 to 55 percent" and inserting "25 percent".

Secretary. If this amount is greater than that necessary to satisfy the approved State plans for new States, the unallocated amount shall be applied toward satisfying any unmet need of States¹⁷⁻¹⁷⁴ whose State plans have been approved.

(iii) In any fiscal year, any funds that remain unallocated after satisfying the requirements of clauses (i) and (ii) shall be reallocated in the following fiscal year according to procedures established pursuant to paragraph (10)(B)(ii).

(7)(A) The value of the benefit received by any recipient under any program for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under other Federal or State programs.

(B) Any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(8) For each fiscal year, the Secretary shall collect from each State that receives a grant under this subsection information relating to—

(A) the number and type of recipients served by both Federal and non-Federal benefits under the program for which the grant is received;

(B) the rate of redemption of coupons distributed under the program;

(C) the average amount distributed in coupons to each recipient;

(D)¹⁷⁻¹⁷⁵ the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

(E)¹⁷⁻¹⁷⁵ the effects of the program on farmers' markets, if the information is available; and

(F) any other information determined to be necessary by the Secretary.

(9)¹⁷⁻¹⁷⁶(A) There are authorized to be appropriated to carry out this subsection¹⁷⁻¹⁷⁷ \$8,000,000 for fiscal year 1994, \$10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 2003.¹⁷⁻¹⁷⁸

(B)(i)(I)¹⁷⁻¹⁷⁹ Each State shall return to the Secretary any funds made available to the State that are unobligated at the end of the fiscal year for which the funds were originally allocated. The unexpended funds shall be returned to the Secretary by February 1st of the following fiscal year.

¹⁷⁻¹⁷⁴ Section 203(o)(4)(B) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998, amended this sentence by striking "that desire to serve additional recipients, and".

¹⁷⁻¹⁷⁵ Subparagraphs (D) and (E) completely revised by section 204(v)(7) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994.

¹⁷⁻¹⁷⁶ Sec. 1011(l) of the Federal Reports Elimination and Sunset Act of 1995, P.L. 104-66, 109 Stat. 710, Dec. 21, 1995, struck former paragraph (9) (relating to a compilation of information collected under paragraph (8)) and redesignated former paragraphs (10) and (11) as paragraphs (9) and (10), respectively.

¹⁷⁻¹⁷⁷ Section 204(v)(8)(A) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this subparagraph by striking "\$3,000,000 for fiscal year 1992, \$6,500,000 for fiscal year 1993, and".

¹⁷⁻¹⁷⁸ Section 204(v)(8)(B) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this subparagraph by inserting before the period at the end " , \$10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 1998". Section 203(o)(5) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998, amended this subparagraph by striking "1998" and inserting "2003".

¹⁷⁻¹⁷⁹ Section 204(v)(9)(A) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this subclause by striking "Except as provided in subclause (II), each" and inserting "Each".

(II) Notwithstanding any other provision of this subsection, a total of not more than 5 percent of funds made available to a State for any fiscal year may be expended by the State to reimburse expenses incurred for a program assisted under this subsection during the preceding fiscal year.¹⁷⁻¹⁸⁰

(ii) The Secretary shall establish procedures to reallocate funds that are returned under clause (i).¹⁷⁻¹⁸¹

(10)¹⁷⁻¹⁸² For purposes of this subsection:

(A) The term “coupon” means a coupon, voucher, or other negotiable financial instrument by which benefits under this section are transferred.

(B) The term “program” means—

(i) the State farmers’ market coupon nutrition program authorized by this subsection (as it existed on September 30, 1991); or

(ii) the farmers’ market nutrition program authorized by this subsection.

(C) The term “recipient” means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits.

(D) The term “State agency” has the meaning provided in subsection (b)(13), except that the term also includes the agriculture department of each State and any other agency approved by the chief executive officer of the State.¹⁷⁻¹⁸³

(n)¹⁷⁻¹⁸⁴ DISQUALIFICATION OF VENDORS WHO ARE DISQUALIFIED UNDER THE FOOD STAMP PROGRAM.—

(1) IN GENERAL.—The Secretary shall issue regulations providing criteria for the disqualification under this section of an approved vendor that is disqualified from accepting benefits under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) TERMS.—A disqualification under paragraph (1)—

(A) shall be for the same period as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) shall not be subject to judicial or administrative review.

(o)¹⁷⁻¹⁸⁵ DISQUALIFICATION OF VENDORS CONVICTED OF TRAFFICKING OR ILLEGAL SALES.—

¹⁷⁻¹⁸⁰ Section 204(v)(9)(B) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this subclause by striking “or may be retained by the State to reimburse expenses expected to be incurred for such a program during the succeeding fiscal year”.

¹⁷⁻¹⁸¹ Section 204(v)(10) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this clause by striking the second sentence (relating to the reallocation of unexpended funds with respect to demonstration projects).

¹⁷⁻¹⁸² See note 17-176.

¹⁷⁻¹⁸³ Section 204(v)(11) of P.L. 103-448, 108 Stat. 4745, Nov. 2, 1994, amended this subparagraph by inserting “and any other agency approved by the chief executive officer of the State”.

¹⁷⁻¹⁸⁴ Section 729(i) and (j) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, struck former subsections (n), (o), and (p) and added a new subsection (n). Former subsection (n) added by section 3201(6) of P.L. 100-690, 102 Stat. 4246, Nov. 18, 1988, and amended by section 326(b)(5) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989. Former subsection (o) added by section 123(a)(10) of P.L. 101-147, 103 Stat. 903, Nov. 10, 1989, and amended by section 204(w)(1)(D) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994. Former subsection (p) added by section 123(a)(10) of P.L. 101-147, 103 Stat. 903, Nov. 10, 1989.

¹⁷⁻¹⁸⁵ Subsection (o) added by section 203(p)(1) of P.L. 105-336, 112 Stat. 3164, Oct. 31, 1998. Section 203(p)(2) of P.L. 105-336, 112 Stat. 3165, Oct. 31, 1998, requires the Sec-

Continued

(1) IN GENERAL.—Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments (including any item described in subparagraph (A) issued in lieu of a food instrument under this section).

(2) NOTICE OF DISQUALIFICATION.—The State agency shall—

(A) provide the vendor with notification of the disqualification; and

(B) make the disqualification effective on the date of receipt of the notice of disqualification.

(3) PROHIBITION OF RECEIPT OF LOST REVENUES.—A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

(4) EXCEPTIONS IN LIEU OF DISQUALIFICATION.—

(A) IN GENERAL.—A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to participate in the program if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

(ii)(I) the vendor had, at the time of the violation under paragraph (1), an effective policy and program in effect to prevent violations described in paragraph (1); and

(II) the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(B) CIVIL PENALTY.—If a State agency under subparagraph (A) permits a vendor to continue to participate in the program in lieu of disqualification, the State agency shall assess the vendor a civil penalty in an amount determined by the State agency, in accordance with criteria established by the Secretary, except that—

(i) the amount of the civil penalty shall not exceed \$10,000 for each violation; and

(ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed \$40,000.

(p)¹⁷⁻¹⁸⁶ CRIMINAL FORFEITURE.—

retary of Agriculture to promulgate (A) not later than March 1, 1999, proposed regulations to carry out subsection (o), and (B) not later than March 1, 2000, final regulations to carry out subsection (o).

¹⁷⁻¹⁸⁶ Subsection (p) added by section 203(q) of P.L. 105-336, 112 Stat. 3165, Oct. 31, 1998.

(1) IN GENERAL.—Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (o)(1)(A) issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

(2) APPLICABLE LAWS.—A provision of law described in this paragraph is—

(A) section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)); and

(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (o)(1)(A) issued in lieu of a food instrument under this section), funds, assets, or property.

(3) PROPERTY SUBJECT TO FORFEITURE.—The following property shall be subject to forfeiture under paragraph (1):

(A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).

(B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

(4) PROCEDURES; INTEREST OF OWNER.—Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

(5) PROCEEDS.—The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

(q)¹⁷⁻¹⁸⁷ The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the overseas spe-

¹⁷⁻¹⁸⁷ Subsection (q) added by section 674(e) of P.L. 106-65, 113 Stat. 512, Oct. 5, 1999.

cial supplemental food program established under section 1060a(a) of title 10, United States Code.

[CASH GRANTS FOR NUTRITION EDUCATION]

[SEC. 18. ¹⁸⁻¹ [42 U.S.C. 1787]]

NUTRITION EDUCATION AND TRAINING

SEC. 19. ¹⁹⁻¹ [42 U.S.C. 1788] (a) Congress finds that effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs should be encouraged. ¹⁹⁻²

PURPOSE

(b) It is the purpose of this section to establish ¹⁹⁻³ a system of grants to State educational agencies for the development of comprehensive nutrition education and training ¹⁹⁻⁴ programs. Such nutrition education programs shall fully use as a learning laboratory the school lunch and child nutrition programs.

DEFINITIONS

(c) For purposes of this section, the term “nutrition education and training ¹⁹⁻⁵ program” means a multidisciplinary program by which scientifically valid information about foods and nutrients is imparted in a manner that individuals receiving such information will understand the principles of nutrition and seek to maximize their well-being through food consumption practices. Nutrition education programs shall include, but not be limited to, (A) instructing students with regard to the nutritional value of foods and the relationship between food and human health; (B) training child nutrition program ¹⁹⁻⁶ personnel in the principles and practices of food service management; (C) instructing teachers in sound principles of nutrition education; (D) developing and using classroom materials and curricula; and (E) providing information to parents and caregivers regarding the nutritional value of food and the relationship between food and health. ¹⁹⁻⁷

¹⁸⁻¹ Section 730 of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, repealed section 18. Section 18 originally added by section 23 of P.L. 94-105, 89 Stat. 528, Oct. 7, 1977.

¹⁹⁻¹ This section added by section 15 of P.L. 95-166, 91 Stat. 1340, Nov. 10, 1977.

Section 731(f) of P.L. 104-193, 110 Stat. 2307, Aug. 22, 1996, struck subsection (j). Subsection (j) originally added by section 124(4) of P.L. 101-147, 103 Stat. 906, Nov. 10, 1989.

Section 21(c)(2)(E) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(c)(2)(E)) requires any food service management institute established under section 21(a)(2) of such Act to act as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs, including activities carried out under this section.

¹⁹⁻² Section 731(a)(1) of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, amended this subsection by striking “that—” and all that follows through the period at the end and inserting “that effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs should be encouraged.”

¹⁹⁻³ Section 731(a)(2) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, amended this subsection by striking “encourage” and all that follows through “establishing” and inserting “establish”.

¹⁹⁻⁴ Section 205(a) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended subsections (b), (c), (d)(1), (f)(1)(G), and (j)(1) by striking “information and education” each place it appears and inserting “education and training”.

¹⁹⁻⁵ See note 19-4.

¹⁹⁻⁶ Section 205(b)(1) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this subparagraph by striking “school food service” and inserting “child nutrition program”.

¹⁹⁻⁷ Section 205(b)(2) and (3) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this subsection by striking “and” at the end of subparagraph (C) and by inserting subparagraph (E).

NUTRITION INFORMATION AND TRAINING

(d)(1) The Secretary is authorized to formulate and carry out a nutrition education and training¹⁹⁻⁸ through a system of grants to State educational agencies, to provide for (A) the nutritional training of educational and food service personnel, (B) training school food service personnel in the principles and practices of food service management, in cooperation with materials developed at any food service management institute established as authorized by section 21(a)(2) of the Richard B. Russell National School Lunch Act,¹⁹⁻⁹ and (C) the conduct of nutrition education activities in schools, child care institutions, and institutions offering summer food service programs under section 13 of the Richard B. Russell National School Lunch Act,¹⁹⁻¹⁰ and the provision of nutrition education to parents and caregivers.¹⁹⁻¹¹

(2) The program is to be coordinated at the State level with other nutrition activities conducted by education, health, and State Cooperative Extension Service agencies. In formulating the program, the Secretary and the State may solicit the advice and recommendations of State educational agencies, the Department of Health and Human Services, and other interested groups and individuals concerned with improvement of child nutrition.¹⁹⁻¹²

(3) If a State educational agency is conducting or applying to conduct a health education program which includes a school-related nutrition education component as defined by the Secretary, and that health education program is eligible for funds under programs administered by the Department of Health and Human Services, the Secretary may make funds authorized in this section available to the Department of Health and Human Services to fund the nutrition education component of the State program without requiring an additional grant application.

(4) The Secretary, in carrying out the provisions of this subsection, shall make grants to State educational agencies who, in turn, may contract with land-grant colleges eligible to receive funds under the Act of July 2, 1862,¹⁹⁻¹³ or the Act of August 30, 1890,¹⁹⁻¹⁴ including the Tuskegee Institute, other institutions of higher education, and nonprofit organizations and agencies, for the training of educational, school food service, child care, and summer food service personnel¹⁹⁻¹⁵ with respect to providing nutrition education programs in schools and the training of school food service

¹⁹⁻⁸ See note 19-4.

¹⁹⁻⁹ Section 124(1)(A)(i) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, amended subsection (d)(1)(B) to read as provided above.

¹⁹⁻¹⁰ Section 124(1)(A)(ii) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, amended subsection (d)(1)(C) by striking "schools and child care institutions" and inserting "schools, child care institutions, and institutions offering summer food service programs under section 13 of the National School Lunch Act".

¹⁹⁻¹¹ Section 205(c)(1) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this subparagraph by inserting before the period at the end the following: ", and the provision of nutrition education to parents and caregivers".

¹⁹⁻¹² Section 124(1)(B) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, amended subsection (d)(2) by striking "the National Advisory Council on Child Nutrition;".

Section 327(1)(A) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (d)(2) by striking the semicolon each place it appears and inserting a comma.

¹⁹⁻¹³ Section 327(1)(B)(i) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (d)(4) by striking "(12 Stat. 503, as amended; 7 U.S.C. 301-305, 307, and 308)".

¹⁹⁻¹⁴ Section 327(1)(B)(ii) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (d)(4) by striking "(26 Stat. 417, as amended; 7 U.S.C. 321-326 and 328)".

¹⁹⁻¹⁵ Section 205(c)(2) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph by striking "educational and school food service personnel" and inserting "educational, school food service, child care, and summer food service personnel".

personnel in school food service management, in coordination with the activities authorized under section 21 of the Richard B. Russell National School Lunch Act.¹⁹⁻¹⁶ Such grants may be used to develop and conduct training programs for early childhood, elementary, and secondary educational personnel and food service personnel with respect to the relationship between food, nutrition, and health; educational methods and techniques, and issues relating to nutrition education; and principles and skills of food service management for cafeteria personnel.

(5) The State, in carrying out the provisions of this subsection, may contract with State and local educational agencies, land-grant colleges eligible to receive funds under the Act of July 2, 1862,¹⁹⁻¹⁷ or the Act of August 30, 1890,¹⁹⁻¹⁸ including the Tuskegee Institute, other institutions of higher education, and other public or private nonprofit educational or research agencies, institutions, or organizations to pay the cost of pilot demonstration projects in elementary and secondary schools, and in child care institutions and summer food service institutions,¹⁹⁻¹⁹ with respect to nutrition education. Such projects may include, but are not limited to, projects for the development, demonstration, testing, and evaluation of curricula for use in early childhood, elementary, and secondary education programs.¹⁹⁻²⁰

AGREEMENTS WITH STATE AGENCIES

(e) The Secretary is authorized to enter into agreements with State educational agencies incorporating the provisions of this section, and issue such regulations as are necessary to implement this section.

USE OF FUNDS

(f)(1)¹⁹⁻²¹ The funds made available under this section may, under guidelines established by the Secretary, be used by State educational agencies for—

¹⁹⁻¹⁶Section 124(1)(C) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, amended the first sentence of subsection (d)(4) by inserting before the period the following: “, in coordination with the activities authorized under section 21 of the National School Lunch Act”.

¹⁹⁻¹⁷Section 327(1)(C)(i) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (d)(5) by striking “(12 Stat. 503, as amended; 7 U.S.C. 301-305, 307, and 308)”.

¹⁹⁻¹⁸Section 327(1)(C)(ii) of P.L. 101-147, 103 Stat. 918, Nov. 10, 1989, amended subsection (d)(5) by striking “(26 Stat. 417, as amended; 7 U.S.C. 321-326 and 328)”.

¹⁹⁻¹⁹Section 205(c)(3) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph by inserting after “schools” the following: “, and in child care institutions and summer food service institutions.”.

¹⁹⁻²⁰Section 817(f) of P.L. 97-35, 95 Stat. 532, Aug. 13, 1981, repealed subsection (d)(6), relating to State prohibition on administration of the program in nonprofit private schools and institutions.

¹⁹⁻²¹Section 205(d) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph—

- (1) by striking “(f)(1) The funds” and inserting “(f)(1)(A) The funds”;
- (2) by striking “for (A) employing” and inserting “for—
“ (i) employing”;
- (3) by redesignating former subparagraphs (B) through (I) as clauses (ii) through (ix), respectively;
- (4) by indenting the margins of each of clauses (ii) through (ix) (as redesignated by paragraph (3)) so as to align with the margins of clause (i) (as amended by paragraph (2));
- (5) by striking “and” at the end of clause (viii);
- (6) by redesignating clause (ix) as clause (xx); and
- (7) by inserting clauses (ix) through (xix).

Section 731(b) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, amended this paragraph—

- (1) in paragraph (1)—
 - (A) by striking subparagraph (B); and
 - (B) in subparagraph (A)—

(A) employing a nutrition education specialist to coordinate the program, including travel and related personnel costs;

(B) undertaking an assessment of the nutrition education needs of the State;

(C) developing a State plan of operation and management for nutrition education;

(D) applying for and carrying out planning and assessment grants;

(E) pilot projects and related purposes;

(F) the planning, development, and conduct of nutrition education programs and workshops for food service and educational personnel;

(G) coordinating and promoting nutrition education and training¹⁹⁻²² activities in local school districts (incorporating, to the maximum extent practicable, as a learning laboratory, the child nutrition programs);

(H) contracting with public and private nonprofit educational institutions for the conduct of nutrition education instruction and programs relating to the purposes of this section;

(I) related nutrition education purposes, including the preparation, testing, distribution, and evaluation of visual aids and other informational and educational materials; and

(J) other appropriate related activities, as determined by the State.¹⁹⁻²³

(2)¹⁹⁻²⁴ A State agency may use an amount equal to not more than 15 percent of the funds made available through a grant under this section for expenditures for administrative purposes in connection with the program authorized under this section if the State makes available at least an equal amount for administrative or program purposes in connection with the program.

ACCOUNTS, RECORDS, AND REPORTS

(g)(1) State educational agencies participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time¹⁹⁻²⁵ for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines to be necessary.

(i) by striking "(A)";

(ii) by striking clauses (ix) through (xix);

(iii) by redesignating clauses (i) through (viii) and (xx) as subparagraphs

(A) through (H) and (I), respectively;

(iv) in subparagraph (I), as so redesignated, by striking the period at the end and inserting "; and"; and

(v) by adding at the end subparagraph (J);

(2) by striking paragraphs (2) and (4); and

(3) by redesignating paragraph (3) as paragraph (2).

¹⁹⁻²² See note 19-4.

¹⁹⁻²³ Section 731(b)(1)(A) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, struck former subparagraph (B). Subparagraph (B) originally added by section 205(d)(8) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994.

¹⁹⁻²⁴ Section 731(b)(2) and (3) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, struck former paragraphs (2) and (4) and redesignated former paragraph (3) as paragraph (2). Former paragraph (3) completely revised by section 205(e) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994.

¹⁹⁻²⁵ Section 731(c) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, amended this sentence by striking "at all times be available" and inserting "be available at any reasonable time".

(2) State educational agencies shall provide reports on expenditures of Federal funds, program participation, program costs, and related matters, in such form and at such times as the Secretary may prescribe.

STATE COORDINATORS FOR NUTRITION; STATE PLAN

(h) ¹⁹⁻²⁶(1) In order to be eligible for assistance under this section, a State shall appoint a nutrition education specialist to serve as a State coordinator for school nutrition education. It shall be the responsibility of the State coordinator to make an assessment of the nutrition education needs in the State, ¹⁹⁻²⁷ prepare a State plan, ¹⁹⁻²⁸ and coordinate programs under this Act with all other nutrition education programs provided by the State with Federal or State funds.

(2) Upon receipt of funds authorized by this section, the State coordinator shall prepare an itemized budget and assess the nutrition education and training ¹⁹⁻²⁹ needs of the State. ¹⁹⁻³⁰

(i) ¹⁹⁻³¹ AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—

(A) FUNDING.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1997 through 2003.

(B) GRANTS.—

(i) IN GENERAL.—Grants to each State from the amounts made available under subparagraph (A) shall be based on a rate of 50 cents for each child enrolled in schools or institutions within the State, except that no State shall receive an amount less than \$75,000 per fiscal year.

(ii) INSUFFICIENT FUNDS.—If the amount made available for any fiscal year is insufficient to pay the amount to which each State is entitled under clause (i), the amount of each grant shall be ratably reduced.

(2) ¹⁹⁻³² Funds made available to any State under this section shall remain available to the State for obligation in the fiscal year

¹⁹⁻²⁶ Section 731(d)(3) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, struck former paragraph (3) of this subsection. Previously, former paragraph (3) was amended by sections 124(2), 214, and 327(2) of P.L. 101-147, 103 Stat. 905, Nov. 10, 1989, and section 205(f)(2) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994.

¹⁹⁻²⁷ Section 731(d)(1)(A) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, amended this sentence by striking “as provided in paragraph (2) of this subsection”.

¹⁹⁻²⁸ Section 731(d)(1)(B) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, amended this sentence by striking “as provided in paragraph (3) of this subsection”.

¹⁹⁻²⁹ Section 205(f)(1) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, amended this paragraph by inserting “and training” after “education”.

¹⁹⁻³⁰ Section 731(d)(2) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996, struck the second and third sentences of this paragraph.

¹⁹⁻³¹ Section 204(1) of P.L. 105-336, 112 Stat. 3167, Oct. 31, 1998, amended the subsection heading and all that follows through paragraph (3)(A) in their entirety. Previously, this subsection was amended by—

(1) section 213 of P.L. 96-499, 94 Stat. 2603, Dec. 5, 1980;

(2) section 806 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981;

(3) sections 315, 362, and 373(b) of P.L. 99-500, 100 Stat. 1783-360, 1783-368, 1783-369, Oct. 18, 1986;

(4) sections 315, 362, and 373(b) of P.L. 99-591, 100 Stat. 3341-363 and 3341-371, 3341-372, Oct. 30, 1986;

(5) sections 4105, 4402, and 4503(b) of P.L. 99-661, 100 Stat. 4071, 4079, 4081, Nov. 14, 1986;

(6) section 124(3) of P.L. 101-147, 103 Stat. 906, Nov. 10, 1989;

(7) section 205(g) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994; and

(8) section 731(e) of P.L. 104-193, 110 Stat. 2306, Aug. 22, 1996.

¹⁹⁻³² See note 19-31. Previously, section 205(h) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, redesignated former paragraph (3) as paragraph (4) and inserted new paragraph (3).

succeeding the fiscal year in which the funds were received by the State.

(3)¹⁹⁻³³ Enrollment data used for purposes of this subsection shall be the latest available as certified by the Department of Education.¹⁹⁻³⁴

DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

SEC. 20.²⁰⁻¹ [42 U.S.C. 1789] (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

(b) The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.²⁰⁻²

(e) The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.

SEC. 21.²¹⁻¹ [42 U.S.C. 1790] **BREASTFEEDING PROMOTION PROGRAM.**

(a) **IN GENERAL.**—The Secretary, from amounts received under subsection (d), shall establish a breastfeeding promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and

Section 204(1) of P.L. 105-336, 112 Stat. 3167, Oct. 31, 1998, redesignated former paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

¹⁹⁻³³ See notes 19-31 and 19-32.

¹⁹⁻³⁴ Section 372(b)(2) of P.L. 99-500, 100 Stat. 1783-369, Oct. 18, 1986, substituted "Department of Education" for "Office of Education of the Department of Health, Education, and Welfare". Section 372(b)(2) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4502(b)(2) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the same substitution.

²⁰⁻¹ Section 20 added by section 1408(b)(2) of P.L. 95-561, 92 Stat. 2368, Nov. 1, 1978.

Section 2243(b) of title 10, United States Code, provides authority to use appropriated funds to support student meal programs in Department of Defense overseas dependent schools, but provides that the authority may be used only if the Secretary of Defense determines that Federal payments and commodities provided under this section and section 20 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b) to support an overseas meal program are insufficient to meet a specified standard.

²⁰⁻² Section 328(b) of P.L. 99-500, 100 Stat. 1783-362, Oct. 18, 1986, struck out end of sentence which authorized appropriations for the unfunded portion of costs for free and reduced-price breakfasts. Section 328(b) of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4208(b) of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made the same deletion.

²¹⁻¹ This section added by section 201 of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992.

assist in the distribution of breastfeeding equipment to breastfeeding women.

(b) CONDUCT OF PROGRAM.—In carrying out the program described in subsection (a), the Secretary may—

(1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;

(2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and

(3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

(c) COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a).

(d) GIFTS, BEQUESTS, AND DEVISES.—

(1) IN GENERAL.—The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a). Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

(2) CRITERIA FOR ACCEPTANCE.—The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

(A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or

(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

SEC. 22.²²⁻¹ [1791] BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT.

(a) SHORT TITLE.—This section may be cited as the “Bill Emerson Good Samaritan²²⁻² Food Donation Act”.

(b) DEFINITIONS.—As used in this section:

(1) APPARENTLY FIT GROCERY PRODUCT.—The term “apparently fit grocery product” means a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

²²⁻¹ This section was originally section 402 of the National and Community Service Act of 1990 (42 U.S.C. 12672). Section 1 of P.L. 104-210, Oct. 1, 1996, amended this section, transferred this section to this Act, redesignated this section as section 22 of this Act, and added this section to the end of this Act. Section 1(a)(2)(A) of P.L. 104-210, Oct. 1, 1996, amended the section heading, by striking “MODEL” and inserting “BILL EMERSON”.

²²⁻² Section 1(a)(2)(B) of P.L. 104-210, Oct. 1, 1996, amended this subsection by striking “Good Samaritan” and inserting “Bill Emerson Good Samaritan”.

(2) APPARENTLY WHOLESOME FOOD.—The term “apparently wholesome food” means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(3) DONATE.—The term “donate” means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(4) FOOD.—The term “food” means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) GLEANER.—The term “gleaner” means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(6) GROCERY PRODUCT.—The term “grocery product” means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7)²²⁻³ GROSS NEGLIGENCE.—The term “gross negligence” means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(8) INTENTIONAL MISCONDUCT.—The term “intentional misconduct” means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(9) NONPROFIT ORGANIZATION.—The term “nonprofit organization” means an incorporated or unincorporated entity that—

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(10) PERSON.—The term “person” means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

(c)²²⁻⁴ LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS.—

²²⁻³ Section 1(a)(2)(C) of P.L. 104-210, Oct. 1, 1996, amended this paragraph in its entirety.

²²⁻⁴ Section 1(a)(2)(D) of P.L. 104-210, Oct. 1, 1996, amended this subsection in its entirety.

(1) **LIABILITY OF PERSON OR GLEANER.**—A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

(2) **LIABILITY OF NONPROFIT ORGANIZATION.**—A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

(3) **EXCEPTION.**—Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

(d) **COLLECTION OR GLEANING OF DONATIONS.**—A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) **PARTIAL COMPLIANCE.**—If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) **CONSTRUCTION.**—This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.²²⁻⁵

²²⁻⁵ This sentence added by section 1(a)(2)(E) of P.L. 104-210, Oct. 1, 1996.

GENERAL NOTES

Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(h)) exempts child nutrition from reductions under sequestration deficit reduction orders.

Section 403(c)(2)(D) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(c)(2)(D)) provides that the 5-year limited eligibility of qualified aliens for Federal means-tested public benefits does not apply to assistance or benefits under this Act.

Section 423(d)(4) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 8 U.S.C. 1138a note) provides that the requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1138a) do not apply to assistance or benefits under this Act.

Section 3 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1752) provides that funds to carry out the Child Nutrition Act of 1966 may be appropriated a year in advance of the fiscal year in which the funds will be used and shall remain available until expended.

Section 9(b)(2)(C)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(iii)) limits the use or disclosure of any information obtained from an application for free or reduced price meals, or from certain State or local agencies, to (inter alia) a person directly connected with the administration or enforcement of this Act.

Section 9(f)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(5)) provides that, during the period ending on September 30, 2003, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served the school breakfast program under section 4 of this Act.

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) requires a school participating in the school breakfast program under section 4 of this Act to, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections, with an exception.

Section 9(i)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(i)) requires a single State agency that administers any combination of the school lunch program, the school breakfast program, the summer food service program for children, or the child and adult care food program, to require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency, and use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) require that special assistance be paid with respect to certain schools based on (inter alia) free breakfasts served under this Act and payments for the breakfasts.

Section 12(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(i)) provides that facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act may be used by a local educational agency to support a nonprofit nutrition program for the elderly.

Section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) permits the Secretary to waive any requirement under the Richard B. Russell National School Lunch Act or this Act, or any regulation issued under either such Act, for a State or eligible service provider that requests a waiver if specified requirements are met, except as provided in section 12(l)(4) of such Act.

Section 12(n) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(n)) establishes a requirement that a school food authority purchase, to the maximum extent practicable, domestic commodities or products, with respect to the purchase of a domestic commodity or product for the school lunch program under that Act or the school breakfast program under section 4 of this Act and a similar requirement for a school food authority in Hawaii.

Section 12(o) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(o)) permits a State, State agency, school, or school food authority to enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring a good or service for programs under the Richard B. Russell National School Lunch Act or this Act (other than section 17 of this Act).

Section 17(f)(3)(A)(ii)(I) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(A)(ii)(I)) defines a 'tier I family or group day care home' as, inter alia, a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under the Richard B. Russell National School Lunch Act or this Act.

Section 17(f)(3)(E)(ii)(I) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(E)(ii)(I)) requires a State agency administering the school lunch program under the Richard B. Russell National School Lunch Act or the school breakfast program under this Act to provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than $\frac{1}{2}$ of the children enrolled are certified to receive free or reduced price meals.

Section 17(q)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(q)(1)) requires the Secretary to provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under section 17 of that Act, in addition to the training and technical assistance that is provided to State agencies under other provisions of that Act and this Act.

Section 17(r)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)(1)) defines "at-risk school child", for purposes of the program for at-risk school children, as a school child who, inter alia, participates in a program authorized under section 17 of that Act operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under that Act or this Act.

Section 17A(c)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a(c)(1)) provides a special reimbursement rate for a supplement served under section 17A of that Act to an eligible child who is participating in a program authorized under section 17A of that Act operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under that Act or this Act.

Section 18(e)(6) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(e)(6)) authorizes the Secretary to waive certain requirements of this Act in making a grant to conduct a pilot project under section 18(e)(1) of the Richard B. Russell National School Lunch Act and does not permit a school food authority to participate in such a pilot project if it has a history of violations of this Act.

Section 21(a)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(a)(1)(B)) requires the Secretary to conduct training activities and technical assistance to improve the skills of individuals employed in school breakfast programs carried out under section 4.

Section 21(c)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(c)(1)(B)) requires any food service management institute established under section 21(a)(2) of such Act to carry out activities to improve the general operation and quality of school breakfast programs assisted under section 4.

Section 25 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769f) requires the Secretary to perform certain duties relating to nonprocurement debarment in connection with child nutrition programs, including the special milk program established under section 3, the school breakfast program established under section 4, and the special supplemental nutrition program for women, infants, and children authorized under section 17.

Section 27 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769h) permits the Secretary to carry out activities to help accommodate the special dietary needs of individuals with disabilities who are participating in a covered program, including the school breakfast program and any other program established under this Act that the Secretary determines is appropriate.

Section 3(a)(2)(D) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) provides that certain commodity specification provisions shall apply to the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

Section 3(b)(1)(A)(iii)(IV) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) requires the Secretary of Agriculture to implement a system to provide recipient agencies with options with respect to package sizes and forms of commodities, taking into account the duty of the Secretary to make direct purchases of agricultural commodities and other foods under the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

Section 3(e)(1)(D)(iii)(IV) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) requires the Secretary of Agriculture to provide by regulation for delivery schedules for the distribution of commodities and products that are consistent with the needs of eligible recipient agencies, taking into account the duty of the Secretary to make direct purchases of agricultural commodities and other foods under the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

The matter under the heading "CHILD NUTRITION PROGRAMS" under "FOOD AND NUTRITION SERVICE" of chapter I of title XI of Public Law 102-368 provides that the Secretary may waive the requirements of this Act as they pertain to schools and institutions only to the degree the Secretary determines necessary to ensure nutrition benefits for program participants in the areas directly affected by natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar.

Section 2(4) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448; 42 U.S.C. 1751 note) provides a congressional finding that supplemental nutrition programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and this Act can help to offset threats posed to a child's capacity to learn and perform in school that result from inadequate nutrient intake.

Section 3(1) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448) provides that it is the sense of Congress that funds should be made available for child nutrition programs to remove barriers to the participation of needy children in the school lunch program, school breakfast program, summer food service program for children, and the child and adult care food program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and this Act.

Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448; 42 U.S.C. 1751 note) requires the Secretary, not later than 18 months after the date of enactment of such Act, to develop and implement regulations to consolidate the school lunch program and the school breakfast program into a comprehensive meal program and prescribes certain requirements for establishing the program.

Section 741 of the Personal Responsibility and Work Opportunity Act of 1966 (Public Law 104-193; 42 U.S.C. 1751 note) requires the Secretary of Agriculture to develop proposed changes to the regulations under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the summer food service program under section 13 of that Act (42 U.S.C. 1761), and the school breakfast program under section 4 of this Act, for the purpose of simplifying and coordinating those programs into a comprehensive meal program, and to submit a report containing the proposed changes to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Economic and Educational Opportunities of the House of Representatives not later than November 1, 1997.

Section 742 of the Personal Responsibility and Work Opportunity Act of 1966 (Public Law 104-193; 8 U.S.C. 1615 note) provides that—

(1) an individual who is eligible to receive free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school breakfast program under section 4 of this Act on the basis of citizenship, alienage, or immigration status; and

(2) nothing in the Act shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien benefits under programs established under this Act (other than the school breakfast program).